
THE

House of Assembly Debates

(OFFICIAL REPORT)

FIRST SESSION 1999 – 2004

HOUSE OF ASSEMBLY

Tuesday, November 6, 2001

Pursuant to the adjournment, the House of Assembly met at 11.20 a.m. on Tuesday, November 6, 2001.

PRESENT

His Honour I. A. ROETT, G.C.M., B.A., Dip. Ed.,
(Speaker)

His Honour J. M. EDGHILL, J.P., (Deputy Speaker)

Hon. Sir Henry FORDE, K.A., Q.C., M.A., LL.M.
(Cantab.)

Hon. Miss M. A. MOTTLEY, LL.B. (Attorney
General and Minister of Home Affairs) (Leader of the
House)

Mr. D. J. H. THOMPSON, LL.B. (Hons.) (Leader of
the Opposition)

Hon. Sir HAROLD St. JOHN, K.A., Q.C., LL.B.

Mr. L. R. TULL, Q.C., M.A. (Oxon.)

Hon. Dr. R. L. CHELTENHAM, Q.C., M.A., M.Sc.
(Econ.)

Hon. Miss B. A. MILLER (Deputy Prime Minister,
Minister of Foreign Affairs and Foreign Trade)

Mr. G. W. PAYNE, LL.B.

Hon. R. C. EASTMOND, B.A. (Hons.), Dip. Ed.,
LL.B. (Hons.), L.E.C., J.P. (Minister of Labour and Social
Security)

Mr. D. CARTER (Chairman of Committees)

Hon. R. N. GREENIDGE, B.A., LL.B. (Minister of
Education, Youth Affairs and Sports)

Hon. G. A. CLARKE, B.Sc., Dip. Ed., J.P. (Minister
of Housing and Lands)

Hon. R. D. MARSHALL (Minister of Public Works
and Transport)

Hon. H. F. LASHLEY (Minister of Social
Transformation)

Hon. R. St. C. TOPPIN, LL.B. (Minister of
Commerce, Consumer Affairs and Business Development)

Mr. D. St. E. KELLMAN

Hon. Miss H. E. THOMPSON, LL.B. (Minister of
Physical Development and Environment)

Mr. M. Z. WILLIAMS

Mr. T. A. PRESCOD, B.A.

Rev. J. J. S. ATHERLEY, B.A., B.Sc., J.P.
(Parliamentary Secretary to the Attorney General and
Minister of Home Affairs)

Mr. D. T. GILL, B.Sc.

Hon. N. A. LYNCH, B.Sc., M.B.A. (Minister of
Tourism and International Transport)

Hon. R. R. FARLEY, B.Sc., J.P. (Minister of
Industry and International Business)

Hon. Miss C. Y. FORDE, J.P. (Minister of State,
Ministry of Education, Youth Affairs and Sports)

Prayers were taken by Cannon Ivan Harewood.

Mr. SPEAKER: The House is now in session.

MINUTES

Mr. SPEAKER: The Minutes of Tuesday, October
30, 2001.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I beg to
move that the Minutes for the Honourable the House of
Assembly for its meeting of Tuesday, October 30, 2001,
which Minutes have been circulated, be taken as read.

Hon. R. C. EASTMOND: I beg to second that, Sir.

Mr. SPEAKER: If there are no corrections or
observations, then let these Minutes stand confirmed.

PAPERS

Hon. R. C. EASTMOND: Mr. Speaker, on behalf of the Honourable Member for Christ Church East, I am commanded to lay the following:

Memorandum of Understanding between the Government of Barbados and Cable and Wireless BARTEL Limited and Cable and Wireless BET Limited.

Mr. Speaker, on behalf of the Honourable Member for St. Michael South, I am commanded to lay the following:

Green Paper on the Sustainable Development of Tourism in Barbados – A Policy Framework.

REPORT FROM SELECT COMMITTEES

Hon. R. C. EASTMOND: Mr. Speaker, I am laying the Report of the Committee of Privileges. Last Wednesday this Committee met to consider a matter. The report is ready and we are asking permission to lay this document. I expect that during the course of the proceedings, the full report is going to be circulated to all Members and I anticipate that later on today, a motion will be brought for its acceptance.

SUSPENSION OF STANDING ORDERS

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I move that Standing Orders Nos. 6, 16, 18, 20, 42(5), 43 and 44 be suspended for the remainder of today's sitting.

Hon. R. C. EASTMOND: I beg to second that, Sir.

The question was put and resolved in the affirmative without division.

GOVERNMENT BUSINESS

ORDER NO. 13 – THE MONEY LAUNDERING
(PREVENTION AND CONTROL)
(AMENDMENT) BILL, 2001

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I rise this morning to speak to the amendment to the Money Laundering (Prevention and Control) Act. This piece of legislation, Sir, was initially passed in 1998 and was placed on our statute books, as the result of a determination by the Government that there was a need for serious legislation to deal with persons who were involved in benefitting from the proceeds of crime.

Indeed, Sir, it is fair to say that a large focus across the world is being placed on the fact that in many instances, certain types of crime have considerable financial benefits to those who perpetrate them. When those profits are derived, they have to be able to deal with the proceeds in a way that

allows them to get back into the legitimate economy, in circumstances, Sir, where in the last 30 years, the possession and trafficking of drugs and the question of white collar crime have preoccupied law enforcement officers across the globe.

There has been a serious move to reduce the attractiveness of this crime by ensuring that we not only deal with persons for the substantive offences but also, be able to deal with the proceeds of those offences, such that they are not able to benefit across the society and launder the money, as is the phrase used, in a way to give people a sense of legitimacy and the earning power and purchasing power, which is not known from legitimate sources.

We in the Caribbean, Sir, have not been exempt from this development. Indeed, Sir, there may well be a temptation on the part of some, to feel that that development is restricted to persons dealing with large sums of money or large offences, but a rigorous examination of the offence, as well as the sociology behind the offence, would suggest that the practice of money laundering is far more wide scale than we have given credit for in recent times.

We in the Caribbean, Sir, have also had to pay particular notice to the issue of money laundering because we live in a world today, where the transfer of capital is facilitated by relatively easy means, as a result of the improvements in technology, and the liberalisation of monetary barriers that would previously have prevented the transfer of funds from one jurisdiction to another, particularly by persons within the private sector.

Sir, we have seen in the last 20 years, the dismantling of these barriers. We have seen the development of technology, such that banking is available electronically, as well as by other immediate means, so that the transfer of capital from one jurisdiction to another is a matter of ordinary day-to-day activity in almost every country across the world

Accordingly, we in the Caribbean, therefore, are not only susceptible to the money laundering which will take place from the laundering of funds from offences within our shore, but also from the use of third countries as a locus for the laundering of funds for offences committed in other parts of the world.

I believe, Sir, that this has also placed a totally different complexion in respect of our vulnerability as a jurisdiction. I speak now not only of Barbados but, Sir, of all states across the world, which have relatively attractive regimes for investment and which, therefore, will stand out as an opportunity for persons wanting to invest excess funds that may be available to them from these illegitimate sources.

So that you have seen a phenomenon develop, Mr. Speaker, where a combination of forces has made many third party countries attractive, either for the conduit of funds or the placement of funds in terms of investments. It has meant, therefore, Sir, that we must have a greater sense of due diligence, in respect of examining the source of funds for investments coming into our jurisdiction. It is of significant note that when the Barbados Labour Party Government in the late 1970s, sought to introduce a regime for offshore business in Barbados, they were assailed by accusations that we would have led the country into the arms of the Mafia – as the Honourable Member for the City reminds me – and that we would have made vulnerable, the integrity of the financial and judicial systems.

I believe, Sir, that the test of time has been our greatest ally in these matters and as we indicated on that occasion back in the 1970s, when that regime was modernised, that we have been able to ensure all along that we have put appropriate legislative and administrative mechanisms in place to avoid the reputation of Barbados being tarnished. Also, Sir, everywhere there has been an allegation of persons seeking to use Barbados as a domicile or as a conduit for the laundering of funds, the Government of Barbados has assisted in ensuring that those persons have been brought to justice.

Indeed, Sir, within the last two years there have been two known cases where the Government of Barbados, through its regulatory agencies, has played a significant role in the bringing to justice persons, who sought to use this jurisdiction for inappropriate means and for means of laundering funds that were derived from the proceeds of crime.

Therefore, we start today, not something new, but we are continuing a process which certainly this Barbados Labour Party, was rooted in the design of the offshore system which it essentially represents – the foundation of our international financial services.

Sir, on that occasion we indicated, by way of our commitment, both in 1998 when we passed a substantive legislation, and now today with this amendment, that this Government is committed to ensuring that Barbados' excellent reputation is not, in anyway, tarnished by those who believe they should seek to use this jurisdiction, to act either as a conduit for the transfer of funds, or as a domicile for investment activities for the proceeds of crime.
11.25 a.m.

Therefore, I wish to go further by saying that there are two planks upon which this money laundering legislation clearly have a level of importance for us. They are domestic planks, as I indicated at first, where persons clearly are being lulled into developing a lifestyle that cannot be supported by

legitimate sources, and I will speak more about that later, and the international vulnerability as a result of the improvements in technology, liberalisation of the financial sectors and the transfer of capital across boundaries which makes us vulnerable as a State which is attractive for general investment, but which has a strong and vibrant international financial services sector as one of the main planks of the economy.

Those are the two reasons that support our philosophy behind the need to have money laundering legislation and an administrative and enforcement network to support the aims of the legislation in terms of bringing to justice those persons whom we believe ought to be brought to justice for participating in this area.

Having given that background, Mr. Speaker, Sir, it is important I speak to you as well about the developments internationally that have led to the creation of the Caribbean Financial Action Task Force (CFATF) and its course of work over the last few years which has impinged negatively on many of our neighbours within the region as a result of them being placed on a negative listing.

Mr. Speaker, Sir, Barbados underwent its first mutual evaluation on the Caribbean Financial Action Task Force (CFATF) in 1997. The Caribbean Financial Action Task Force (CFATF) is an offshoot of the main body, the Financial Action Task Force (CFATF), which would have been established largely by the developed countries of the world who believe that there was an urgent need to be able to deal with the issue of the movement of capital from illegal sources, and to be able to put in place appropriate legislative and administrative guidelines to fight money laundering.

Indeed, Sir, all of the 26 countries which constitute the Financial Action Task Force (CFATF) are largely developed countries who have a vested interest in ensuring that persons, whether from their country or other countries, do not benefit from the use of their country in terms of the conduit of money, or the investment of proceeds of crime.

The Caribbean Financial Action Task Force (CFATF) is simply a regional grouping of Caribbean countries that seeks to support the aims and objectives, particularly the 40 recommendations, of the CFATF which were developed on money laundering. If this has not already been made a document of this House, I would wish to do so at this stage, because it is an important document, and the records of this Parliament should see those things to which we have subscribed by being a member of the Caribbean Financial Action Task Force (CFATF) in terms of broad principles.

As I indicated, Barbados had its first evaluation in 1997 and was fortunate enough to pass it. Indeed, the same cannot be said for a number of other Caribbean

countries. therefore, when the Caribbean Financial Action Task Force (CFATF) sought to develop their list of noncompliant jurisdictions, a number of Caribbean countries such as The Bahamas, The Cayman Islands, Dominica, Grenada and St. Vincent and the Grenadines found themselves on that list.

Indeed, Sir, there is absolutely no doubt in most people's minds that this would have affected the investment climate of those jurisdictions, particularly as it was also coming at a time when two other international entities were seeking to put pressure on offshore jurisdictions, particularly those within this region. I speak, Sir, of the Financial Stability Forum which dealt more with the supervisory framework for insurance, and the Organisation for Economic Co-operation and Development (OECD) which spoke specifically to the use of offshore tax havens as a means of avoiding the payment of legitimate taxes in developed countries.

I believe that the general public of Barbados is well familiar with the OECD thrust against offshore tax jurisdictions, since this Government over the last 18 months has worked assiduously to reduce any negative impact the battle with the OECD has had in respect of the attractiveness of our financial services sector to the rest of the world and to investors generally.

Indeed, Sir, in January of this year a specific forum was held between the OECD and member States across the world who were not members of the OECD to protest the fact that the OECD was seeking to take action against countries on the basis of an assessment whether they complied with an instruction to co-operate with the OECD, irrespective of the fact that that had no strong juridical basis and irrespective of the fact that they were seeking at the same time to undermine the basic tenet of sovereignty, that is, a country's right to tax its citizen in a manner that the country determines to be appropriate.

We have seen over the course of the last few months that initiative moved to the point that those countries which initially were being asked to sign a letter of commitment to be able to ensure that they would comply with the directives of the OECD which was set down without consultation, that that has now moved to the development of a framework of agreed principles resting initially on three but now reduced to two, and I speak of the exchange of information and transparency. The third one which remains in dispute, and which has been further undermined by the Secretary of the Treasury, Paul O'Neill from the United States of America backing away from it, is the question of non-discrimination, in other words, a different regime for your offshore and your onshore sectors.

As from January, the Barbados Government supported the principles of the need for exchange of information

between jurisdictions, as well as the need for transparency within jurisdictions. Both of those were consistent with the same philosophy that I spoke of earlier as the philosophy motivating the initial establishment of the offshore centre regime in Barbados back in the late 1970s.

Therefore, we had no difficulty in supporting these matters, but as it related to the question of non-discrimination, the Barbados Government remains forthright in its position that countries could not seek to penalise non-member States of the OECD who were not prepared to sign on the issue of non-discrimination when member States of the very same OECD had practices of non-discrimination within their borders.

11.35 a.m.

We spoke specifically of the practice within the United States of America where persons who were foreigners were not taxed on the interest on savings accounts and in circumstances where Americans, who deposited funds, were however taxed on interest on the same savings accounts. Therefore, any call that would have seen the dismantling of the regime for Barbados' offshore sector to bring about convergence with its onshore taxation policies would have been unfair and would have simply been as a result of might being right, as opposed to being based on the best principles of international law and, indeed, the best principles of the maintenance of a nation's right to its sovereignty and, in particular, its right to determine its taxation.

Indeed, Mr. Speaker, it would have undermined your own authority as the Speaker of this House were we to agree that we should give up and accede our right to determine those taxation principles to the OECD instead of ensuring, as has been done by those who have preceded us, that this Parliament's right remains sovereign in those instances.

I have gone into this background because it is important that persons have a sense of what is happening in terms of these developments and, as I indicated, we are in a situation now where the Secretary of the Treasury in the United States of America, Mr. Paul O'Neill – although everything has been modified by September 11 and I will come to that shortly – on July 18, 2001, gave a full statement on the OECD Harmful Tax Initiative to the Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations, and I would make that Statement, Sir, a document of the House.

That reflected the clear commitment to the precepts of exchange of information and transparency, but clearly saw some distance being put on the issue of non-discrimination and support for the general principle that a country's right to tax is sound. We, therefore, have had over the last 18 months, to contend with three separate entities. The difficulty is that those who are not familiar with the specific

details just have a sense that the Caribbean financial sector is going through pressure. They do not stop to ask whether Barbados was on the Financial Action Task Force as it relates to the list on money laundering, or was it The Bahamas or Caymans, Dominica, St. Vincent, Antigua and Grenada. They do not stop to ask whether we got a clean billing with the Financial Stability Forum, (FSM) or to ask what has happened since Barbados was listed with the OECD Harmful Tax Initiative. They just make assumptions, as they do in tourism when there is an advisory issued against another Caribbean country, that down there is not good, that it is not safe to put money there, or even if it is not safe. I do not want to be mired in controversy when I can place my money in a jurisdiction which does not have any controversy.

Therefore, there would be an inevitable fall in business as a result of the fighting of these battles and in terms of even just simply the compliance with the strict criteria being placed by these three international entities, only one of whom has sought to develop a regional entity, of which we are a member, and that is the Financial Action Task Force.

Sir, as I said, later in my speech, I will speak to the fact of September 11 and terrorism, because that has now placed a totally different complexion on a lot of these matters. Suffice it to say, in respect of Barbados, specifically, we passed the first mutual evaluation in 1997 and even though we passed that first mutual evaluation, there was still considerable pressure from other developed countries of the world as to what kind of listing Barbados should have. I speak in particular now of France. It goes to show you, Sir, that even where you have done all you can do, in respect of what was being required at the time there is another motive that seems to want to suggest that we should not be allowed to be able to participate on a level playing field in terms of global investment and global financial services.

I believe, Sir, that the work of the previous Attorney General must be referred to, for he has worked hard on behalf of this Government in ensuring that in spite of the fact that we passed that first mutual evaluation, that we would not be put on a negative listing as a result of international pressure. It is, to my certain knowledge, Mr. Speaker, Sir, that he did so consistently, both within the Caribbean Financial Action Task Force and in any other appropriate forum that he could find over the last 18 months to advance the case and cause of Barbados in these matters.

In 1998, as I indicated, the legislative framework for the Money Laundering (Prevention and Control) Act was established. For the benefit of those who may be listening who may not be familiar with the definition of money laundering let me just spend a minute reading it to you, because it is set out very clearly in that 1998 legislation at section 3. It reads:

(1) A person engages in money laundering where

- a) the person engages, directly or indirectly, in a transaction that involves money or other property, that is, the proceeds of crime; or
- (b) the person receives, possesses, conceals, disposes of, or brings into or sends out of Barbados, any money or other property that is the proceeds of crime."

It goes on to clarify, Sir, that:

"(2) ... a person engages in money laundering whether he knows or has reasonable grounds to suspect that the property is derived or realised directly or indirectly from some form of unlawful activity, or, where the person is

- (a) an individual, he fails without reasonable excuse to take reasonable steps to ascertain whether or not the property is derived or realised directly or indirectly, from some form of unlawful activity; or
- (b) a financial institution, the person fails to take reasonable steps to implement or apply procedures to control or combat money laundering."

Sir, it is not only a question then of the person who is selling drugs spending the money from the drugs, but if that person goes to buy a property. If the person has no known source of income, no known inheritance, the person has not won 'Lotto', the person has not received this money as a gift and they go to a real estate agent who clearly knows the fellow has nothing, that is an illegal activity too. What it says is that you, as a businessman, or a financial institution, and even as a general citizen, you need to make sure you know the person with whom you are dealing and satisfy yourself that there is no reasonable basis on which to assume this money was not from illegal means.

The word "reasonable" is critical, Mr. Speaker, because nobody is going to expect you to have to do all kinds of searches and peeping on the person, but if on the face of it, it is patent or it is clear that the money or the property which is being used, is such that you need to make another set of investigations, and you find out that it is possible or probable, and it is from illegal sources, and you still do the transaction, then you become liable to be prosecuted under this legislation which was passed in 1998.

That offence has been created. It is a fact that it is usually described as an offence that needs a predicate offence. By that, I mean that there is usually some other substantive offence associated with it, whether it is drugs, whether stealing, whether fraud or whatsoever. It is not

absolutely necessary because there will be instances where there is sufficient information such that a conclusion can be made that the person's income is not from legitimate sources. In those circumstances, as you will see with these amendments we are bringing today, there will be a presumption that it would be the proceeds of crime unless the accused can show – who is the best person to show – where the money has come from.

11.45 a.m.

Sir, as I said before, a proper public education programme has to go with this legislation. It is unfortunate that it has not started before because it is not only a question of us trying to ensure that Barbados does not become an international conduit for money laundering, but there is a problem within the shores of Barbados for persons who want to live beyond their means, who have a lifestyle beyond their means, but who have no known sources of legitimate income to support that lifestyle.

There are those who would say that this may well be some part of an age-old practice since the beginning of mankind, but I want to suggest that the severity and extent of it has perhaps gotten worse in a society that is becoming more known for its materialism than for its intrinsic values to keep it together.

Sir, there are many instances, not only in Barbados but throughout many countries, especially since the ascendancy of drugs as a major player on our social and economic landscape, where persons receive money, not for touching the drugs, but for turning a blind eye, or simply just closing the eye for two minutes while they are on duty at their substantive jobs. Sir, stories are legendary throughout the Caribbean and Latin America where, in particular, systems of regulatory agencies have been corrupted by reason of the fact of persons turning a blind eye during the course of their regular duty.

We have not had many prosecutions in this area, Mr. Speaker, Sir, but I believe that a word to the wise is sufficient, and that the legislative framework, as well as the administrative capacity, is in place for us to be able to take action so that those who believe that they can be involved in the supervision and regulations of our laws, our ports of entry, and any other agencies which are designed to check the integrity of this country's landscape from drugs and other contraband, that any attempt on a consistent basis to undermine those laws and the enforcement of the same, must now be met by vigorous prosecution and these matters being heard before the Court of Justice.

Sir, I believe it is also fair to say that level of serious corruption is akin to a breach of fiduciary duty. There is no offence in law within the range of offences of fraud that is worse than a breach of fiduciary duty because when you trust somebody and that person breaches that trust, then it is the

worse offence because a person was led to believe that they had the capacity and that trust was breached. Sir, I believe this is a cancer which, if left alone, can destroy the moral fabric of this society.

Sir, we as a small society have far more to lose if those who are charged with the responsibility of maintaining our regulatory agencies are found aiding and abetting persons wishing to commit crime. I believe, having spoken to the Commissioner of Police, that the Royal Barbados Police Force understands, and has indicated, that it will do all within its power to deal with persons within those regulatory agencies who feel they must undermine the law under which they are employed and paid to support as the framework to protect the fabric of this country.

Sir, it is a sad statement but, as I said, it becomes one that is all the more prevalent in societies where people have greater attachment to materialism than to intrinsic values of hard work, discipline and understanding that in life, fast money means fast jail or fast death. We have to get that message across in a strong public education programme.

To the credit of the Royal Barbados Police Force, I will not refer to the substance of the case but simply to say that prosecution was brought against a very close friend, a romantic liaison of a person who was convicted of drug trafficking and who is now serving time. The Royal Barbados Police Force has now prosecuted the young lady with whom he had a romantic liaison for the possession of funds which are believed to be as a result of proceeds of crime, and who has no known legitimate source to support the existence of the same. Sir, I believe that is the first of many to come.

One of the things the Money Laundering Prevention and Control legislation in 1998 would have done was to lay the framework for the Anti-Money Laundering Authority. This Authority was established with a view towards ensuring that the regulatory framework could be developed, as well as to help advise in the management of Barbados' affairs both on an international and domestic level, as well as to develop the framework and guidelines for those entities who would most be involved in the issue of fighting money laundering. Sir, I speak specifically of financial institutions.

Sir, the Anti-Money Laundering Authority was chaired by Desirée Cherubin who, until two weeks ago, was Chairman, but who is now working with the new Caribbean Regional Technical Assistance Centre (CARTAC) established yesterday. I believe that is appropriate in this debate for me to signal her contribution as Chairman of that entity in respect of helping us to lay an appropriate framework and, also for fighting the negative listing by the

Caribbean Financial Action Task Force against Barbados. Desirée Cherubin as well as the Deputy Chairman, Jeff Cumberbatch, and all other members of the Anti-Money Laundering Authority, must be commended for the work done between 1998 and now.

In August 2001, a new unit was launched by the previous Attorney-General known as the Financial Intelligence Unit. This is the executive arm of the Anti-Money Laundering Authority. This arm will see to it that the work which must be done in respect of liaising with those entities from which information can be gathered about suspicious transactions over a threshold amount – in this instance the threshold is \$10 000 – and that the information is passed on to the Financial Intelligence Unit so that further investigation can be done to determine whether there is an appropriate amount of core information to pass on to the Royal Barbados Police Force and the Director of Public Prosecutions.

Mr. Speaker, I have taken the time to go through these things in detail because I recognise that this is, in very many respects, a new concept to the Barbadian public, and we have accepted that there must be a vigorous public programme which we will start shortly.

The Financial Intelligence Unit which was launched in August has a relationship with the banks, the credit unions and the insurance companies. Indeed, Sir, one of the amendments which we will bring today will broaden the definition so that the relationship is not only with financial institutions, but it is with entities selling financial services, because we have the classic case of the Post Office which is used by many for the transfer of funds.
11.55 a.m.

Recently, the Police have found out that the Post Office is being used for the transfer of illegitimate funds. It is, therefore, imperative that the Financial Intelligence Unit has a relation with all institutions dealing with the sale of financial services, or acting generally as a cambio for the exchange of funds, foreign currency *et cetera*.

Sir, to date, the Financial Intelligence Unit, has only three staff members. My Ministry has made an approach to the Ministry of the Civil Service for the further strengthening of that Unit because it is recognised that if they are to do their job effectively, then there would be a need for a number of other officers in order to carry out the job appropriately, given the number of entities selling financial services in Barbados.

Mr. Speaker, it is of note that they do not look into every transaction over \$10 000, but only those which are reported as suspicious. Sir, that should be borne in mind because were we to do every transaction, it would be

impossible for us to execute the mandate of the Authority. In those circumstances, a relationship is developed between the entities selling the financial services where those matters that attract suspicion are the ones upon which further investigation is done.

Mr. Speaker, we found that the legislative framework which was passed in 1998, while setting out a basic framework for the tightening of money laundering, needed to be strengthened in a number of key areas. I keep referring to the fact that we are doing this both for domestic reasons as well as international reasons. It is of significance that we will have to face the second mutual evaluation by the Caribbean Mutual Action Task Force between the 12th and 15th November. Given the current economic climate in which we find ourselves, the Barbados Government has determined it will do all in its power to ensure that we can have as favourable a rating as possible during the course of that second evaluation.

Sir, by mutual evaluation, we mean that other members of the Caribbean Financial Action Task Force will be the ones coming to assess our legislative and administrative framework. They are persons from the Bahamas, St. Lucia and I believe the Cayman Islands. Barbados has been invited to go and conduct evaluations on other Caribbean jurisdictions. This is not a case of people coming from overseas who do not know the region or understand the cultural and business realities of the region. They are our own brothers and sisters in the Caribbean who are also involved in financial services, whether they are lawyers or regulators. These persons will be coming to Barbados and meeting with all of the regulatory agencies that are affected, the anti-money laundering, my Ministry, various regulatory agencies within Government and representatives of the private sector, to be able to give an assessment.

Mr. Speaker, whereas the first mutual evaluation was in respect of determining whether we have a legislative framework for fighting these matters, this evaluation goes further and seeks to determine whether the framework which is in place is effective. This is significant because it means that it not only addresses whether an Act is in place, but whether the Act that is in place is effective to achieve the objectives of the legislation, as well as whether the administrative framework, the training procedures, guidelines and the manuals are all in place. Sir, not only in the Anti-Money Laundering Authority and the Financial Intelligence Unit, but all of the institutions selling financial services and all entities with whom we must deal within the regulatory framework to fight money laundering, also ensuring that people have a sense of understanding what it is in order to fight it.

Mr. Speaker, I have a view, and I have said it in here on many occasions, that many people in Barbados believe

the only crime is murder, you might also get rape and burglary. People feel that unless you commit such acts, you have not committed a crime. There has to be a sense that when you seek to spend money that you have not earned legitimately, inherited, won appropriately without resort to foul means, it is a crime and it is wrong.

This mutual evaluation, next week, will seek to determine whether all those things are in place – the legislation, and the substance of it, the staffing of the Unit and the relationship with the financial entities or as I said, entities like the Post Office which deal with the sale of financial services, credit unions, banks, insurance companies, the Bar Association, the Association of Real Estate Agents and Chartered Accountants. All of those people who deal with the sale of services, in particular, properties with large sums of money, which is the hallmark of the transactions, have a responsibility to know their customers. Sir, these developments are not unique to Barbados but they are the subject of legislation the world over.

Mr. Speaker, one of the things we have also been doing before coming with this legislation has been to develop a series of knowing-your-customer guidelines. I think I can say to this Honourable Chamber that the Financial Intelligence Unit and the Anti-Money Laundering Authority have been busy in ensuring that appropriate work has been done with the banks, the credit union movement, the insurance companies and the international business sector have been very responsive. Indeed, guidelines have been developed for each of those four entities. The banks, credit union movement, insurance companies and the international business sector, they essentially represent the four front-line sectors who we believe have that responsibility.

The Head of the Financial Intelligence Unit has been meeting with other professional entities and appropriately briefing them. One of the things we are trying to do is to encourage general members of the community, particularly the business community, to pass on information. The responsibility on them is not mandatory, but where they do pass on information, they can be a determination of a safe harbour. In other words, their names will not be affected, nor will they be prosecuted for simply reporting to the Financial Intelligence Unit a suspicious transaction, which can then be investigated to determine whether there is an appropriate cause for concern or not.

12.05 p.m.

That will also have to be the subject of more intense public education and sensitisation of those professional entities to which I have referred, but I am satisfied that that work has gone ahead. There will be, and I say this tandemly, as I speak of other professional bodies in the future, we will have at some time across the country to have serious dialogue and to the extent to which legislation and practices

will enact as encouragement upon traditionally held notions of privilege in professions.

It is significant that in the United Kingdom, they have now gone on to suggest in the draft directives that legal professionals should be included to the extent that they assist or represent clients in respect of the purchase or sale of a real property or business entity, the handling of clients' funds, securities or other assets, the opening or managing of banks or securities accounts, the cooperation or management of companies, trusts, or similar structures, and the execution of any other financial transactions.

Under the current proposals, legal professionals representing clients in legal proceedings are exempted. Many accountants in legal firms feel that they are only covered to the extent that they carry on financial business but the new draft coming out of the European Union should undermine and remove all of that.

Let me state, however, for the avoidance of doubt, the position of Barbados which clearly exempts persons who can make the defense of legal clients' privilege. At this point in time, we are not there but suffice to say, Mr. Speaker, it does not take a Solomon to realize that before the development of a financial system in Barbados, the traditional mode of banking for many Barbadians was, in fact, with solicitors in the maintenance of their clients' accounts and not, in fact, banks. In many instances, funds were not only deposited but people borrowed from the solicitors themselves to purchase property or to help them out of a bind.

Aside.

Hon. Miss M. A. MOTTLEY: Sir, I am being told that it was before my time that there was also a differential rate of interest which would have made it attractive.

Mr. Speaker, Sir, it does not take a Solomon to recognize and to deduce that if we are placing such stringent mechanisms on the major entities that are selling financial services in Barbados – the banks, the credit unions which have become one of the largest banking sectors within the whole service industry, the insurance companies, *et cetera*, that persons may try to hide behind legal professional privileges.

I want to believe and to say for the Record, Mr. Speaker, that I do not believe that any attorney-at-law in Barbados would try to breach the professional ethics, or would try to hide funds that they know to be illegitimate in their clients' accounts. I would want to believe, Mr. Speaker, that this is not the case. I can assure you that there will be a level of vigilance so that if those determinations

that are made, this Government will not sit as a lame duck and refuse to amend the legislation to deal with the problem.

The problem, Sir, is what the legislation is designed to deal with. It is simply that the juridical basis on which matters of legal professional privilege can be attached, is still somewhat very tenuous and there is very little jurisprudence that is settled on it. We therefore, will watch with very wide opened eyes, but I would like to believe that those who have taken the oath on becoming a Member of the Bar, would remember that the very law which they have a duty to uphold, will be offended if those practices are encouraged.

Mr. Speaker, Sir, we have, therefore, developed these “know your customer” guidelines. Each bank and credit union is required to appoint a compliance officer. Manuals have been produced and we have a sense that we have truly gone beyond just paying lip service to this matter. We are developing the infrastructure where we can appropriately fight money laundering, both at the domestic level, and to the extent that Barbados is being used as a transshipment point.

I am also now satisfied with the recent prosecution, Sir, that too is able to respond appropriately to ensure the matters which must go before the court, for the court’s determination. Let us all remember that there is a system where the court is the final arbiter of a man’s innocence or guilt. These manuals will also ensure that those matters which must go before the court for further determination will be done.

I will now speak to the amendments which are specifically before this Chamber. We felt, Mr. Speaker, that there was a need to ensure that the Financial Intelligence Unit, while established in August, has a statutory basis as the executive arm of the Money Laundering Authority. In those circumstances, Sir, one of the amendments before this Honourable Chamber today, seeks to provide for that statutory basis for the Financial Intelligence Unit.

Regarding insurance, it makes it easier that those powers, which are serious powers and which it enjoys, have the clear basis of legal foundation. Also that we have the capacity to be able to ensure there is appropriate exchange of information within and amongst other jurisdictions as well, and not just within the four corners of Barbados. In those circumstances, Sir, that establishment is clearly provided for under section 6(d) of the legislation. I believe, Sir, we will find that we will be far more effective with the Financial Intelligence Unit and its work.

The legislation also provides for the Authority to establish a training requirement, and to provide training for any necessary financial institution in respect of business transaction or record keeping.

It provides, therefore, for a legislative framework for what I have just described, that we have been doing administratively; that we have been providing the training sessions for the banks and the other financial institutions and are ensuring that that becomes a feature of the legislation. 12.15 p.m.

Sir, we include a definition for a director who clearly is the director of the Financial Intelligence Unit and Authority (FIUA). We also ensure that, as I said, we are not restricted to financial institutions, but we broadened the scope of the legislation to any person whose business involves money transmission services, investment services, or any other services of a financial nature. Mr. Speaker, we look at the substance of the services and not the nature of the institution because the state of financial services now has blurred across a number of professions and not just banks.

Indeed, Sir, it is fair to say that in the early twenty-first century, the concept of a bank, as we have traditionally known it, is going to change just as the concept of a post office as we have traditionally known it, will change. As I indicated earlier, we are not just flying a kite but there has been actual information suggesting to us that there is a growing use of the Post Office, as a means of transferring illegitimate funds. Sir, for those who are not yet aware, this legislation will ensure that all suspicious transactions over a certain amount, will now come to the attention of the FIUA, such as that will not be a loophole provided for by the 1998 legislation.

We have also, Mr. Speaker, ensured that where we have established the Authority, that the Authority has the power, Sir, when it has reasonable grounds to believe that a business transaction involves criminal activity or proceeds of crime, it is a mandatory requirement that it passes on the information to the Commissioner of Police for further investigation.

It is very clear, by limiting what the Authority can and cannot do, in terms of the fact that the Authority must conduct those investigations that are necessary for the proper execution of this Act, that it may instruct financial institutions to take such steps, as may be appropriate, to facilitate any investigation by the Authority. In other words, they must assist the authority in terms of making records available. All records, as provided for in this amendment, Sir, passing through the hands of the Authority are to be confidential, and can only be disclosed when it is necessary for compliance with other obligations under this legislation.

Sir, in the context of a court order, or in the context of executing an obligation that is provided for by statute, that is the only way in which any information coming into the FIUA is passed on. It is important that we understand this because, as I said, when we are talking about people’s financial records, clearly, there is a requirement for utmost

confidentiality, except to the extent that it is necessary to prosecute wrong doing effectively, or to the extent that it is necessary to comply with other obligations under the legislation.

It can require, from a financial institution, reproduction of any information, except information which is the subject of legal professional privilege. I spoke about that a few minutes ago. Sir, it still is protected in order to ensure that it fulfills its functions. Indeed, Sir, the legislation places on the FIUA, responsibility to retain a record of the information that it receives under this section, for a minimum of five years after the information has been received.

Mr. Speaker, the legislation also provides for access by the Financial Intelligence Unit and Authority's Director, not any other officer – and I want to be clear about that – to access and to have access to information from the Central Bank, the Customs and Excise Department, the Immigration Department, Inland Revenue Department, the Land Tax Department, the National Insurance Department and the Value Added Tax which is controlled by the Comptroller of Customs.

Mr. Speaker, it is important we understand the reason for this because invariably, these are the regulatory entities within Barbados which have the information, very often, that will be needed to support the information from the entities selling financial services. Sir, we have limited it to the Director speaking to the head of those agencies, so that it is not the subject of officers down the line, dealing with people's private and confidential information.

We have tried to put in every possible safeguard to protect the integrity of the nature of the intelligence gathering, and at the same time, to meet the highest standards of privacy as we would wish to maintain, while not undermining the public's need for this scourge to be stamped out.

We have also, Mr. Speaker, ensured that the FIUA has the power to apply to a judge in chambers to do two things, and it is important that you understand the time bound nature of those two things.

Information received from any of the financial entities, entities selling financial services or any of the other regulatory entities I referred to, on the basis of that information, Sir, the FIUA may apply to a judge in chambers and may seek to do one of two things:

- “3. To have an order to prohibit the person from completing a transaction for a period, not exceeding 72 hours, so they can stop a transaction for up to 72 hours and this clearly is

an instance, Sir, where there would be an attempt to move funds outside of the arm of the jurisdiction.”.

Sir, therefore, we have the power to be able to stop that, but that prohibition does not and cannot stop the person from completing the transaction beyond three days, or beyond 72 hours.

- “4. They can also apply for an order, Sir, to freeze a person's bank account, for a period not exceeding five days.”.

Once again, Sir, what this does is to act as a holding bay, while other procedures can be put in place that will reach and comply with higher standards, as are provided for in our legal system.

Mr. Speaker, it is important the public understands that while they are being given the extraordinary power of applying to a judge in chambers, the nature of it is time bound to 72 hours, in respect of the cessation of the completion of a transition and in respect of the freezing of a bank account, Sir, for a period not exceeding five days.

This legislation also, Mr. Speaker, seeks to give the Financial Intelligence Unit and Authority, the authority to communicate information that is relevant to this Act to any National Financial Intelligence Unit of another State. It is important, Sir, that I should have said at the beginning of this Bill, that I propose to give a second reading speech, both for this amendment to the Money Laundering Prevention and Control Act, as well as to the amendment to the Mutual Assistance in Criminal Matters Act, which only seeks to extend that provision for mutual assistance to non-Commonwealth countries, which are signatory to the Vienna Convention.

Sir, that piece of legislation of mutual assistance in criminal matters which was passed about ten years ago, provides a framework under which there can be co-operation in legal matters, criminal matters in particular, between Commonwealth countries. We have also, in addition, to that piece of legislation, the power to assist those countries with which we have a treaty arrangement that speaks to this issue. I refer specifically to the United States of America.

There are other countries across the globe now, which have a capacity and are more in need of information because of the prevalence of transnational crime, movement of capital, with which we may have to interact. These amendments say, okay, we are prepared to do it, but let it be those countries that are signatory to the Vienna Convention, which is the United Nations Convention, that governs the whole fight against transnational crime and illegal substances.

12.25 p.m.

However, people are still signing on but we suspect that after September 11 and after Resolution 1373, to which I will refer before I finish, that more and more countries will find that that is going to be one of the things on which they will bear pressure if they fail to sign, largely because it is the basis of reciprocity which will also be provided for in the amendment that we are bringing under the Mutual Assistance in Criminal Matters Act that will drive the cooperation.

Nobody is going to help a country that is not helping them, but if you have arrangements in place that provide for reciprocity, then there would be a sense of satisfaction that we can work together in the fight against money laundering and transnational crimes generally.

Mr. Speaker, the legislation provides generally for communication of information by the Director to foreign national entities, just as he will have the power to receive information from them for transactions to which our nationals have been involved and for which we would wish to build a case in terms of the prosecution of those persons whom we believe and have evidence to support have breached the law.

Mr. Speaker, the other major amendment that this legislation speaks to, is that it does a lot of other technical things like exempting commercial airline carriers in respect of the receipt of money over a certain amount and complies and puts a legal basis for the question at the airport now on the Immigration Form asking you whether you are carrying more than \$10 000. Persons will recognise that was not on our Immigration Forms before this year, but it is on now, although persons should remember that under the provisions of the Exchange Control Authority Act, there is already an offence for seeking to carry money over a certain amount outside Barbados without the permission of the Central Bank of Barbados, so this just supports the philosophy behind that same position.

However, the one that I would wish to spend a little time on is the amendment at section 20(a), which is found at clause 7 of the Bill. I will read it because I believe it is important that persons understand it. This amendment seeks to provide:

“Where a person is charged with an offence under section 20, and the Court is satisfied that the property in his possession or under his control was not acquired from income derived from a legitimate source, then it shall be presumed unless the contrary is proved, that the property was derived from the proceeds of crime.”

Mr. Speaker, you will remember that I read to you earlier section 3 of the substantive legislation which defines money laundering as that which involves the dealing directly

or indirectly with money or property derived from the proceeds of crime. What is the proceeds of crime?

This section says very simply that if the court is satisfied, after the prosecution has led evidence as to the existence of this money or this property, and evidence of the income that is known to be the stated income of the accused – remember all of that investigation would have been done before hand – and there is a clear gap between what is known and the value of what is before the court as property, the judge may well come to the reasonable conclusion that that is in fact property which does not appear to be derived from a legitimate source. What it then does is that the judge can say to the accused – since he does not accept that it is from a legitimate source – that unless the accused can show him how he or she has acquired this property, then he would deem that the property is the proceeds of crime.

Now, I want to spend two minutes on this because what we are doing here is letting the accused person who comes before the Court and who owns the property – because that person will be the best person who can tell you how he or she acquired the property – that unless they can tell the court how he or she acquired the property, then the judge is at liberty to deem that the property which he believes comes from illegitimate sources to be the proceeds of crime.

Now, technically in law that is a shift of an evidential burden and it is also a presumption which is rebuttable. In other words, the judge cannot make that presumption and ignore the fact that the accused may say, but look, I won ‘Lotto’ three months ago. Here is the evidence that I won \$1 million in ‘Lotto’ and, therefore, that is how I got this money. The best person who can tell you whether or not the man won ‘Lotto’ is the accused himself or herself.

For those people who believe that we have juries who would not make that assumption automatically, then we do not understand how humans operate and how people apply commonsense to day-to-day situations. The average person on the street will tell you that if you own property there is nobody better to tell you how you own that property than you yourself. So all this section seeks to do is to reflect that in law.

Now, what we have done is that the Barbados Constitution does provide for the presumption of innocence at section 18 under the fundamental freedom clauses to the extent even though that section 18 is constrained by another subsection, at section 18 subsection 11, which said that nothing in any law or Act shall be unlawful to the extent that it shifts the burden on the accused to prove a particular fact.

I believe, Sir, that that section if broadly interpreted might well be broad enough to cover this occasion, but if narrowly interpreted, it may be determined that the facts do

not relate to anything which is an essential element of the offence. Since proceeds of crime is an essential element of the money laundering offence, in those circumstances it does not fall within the exception to the presumption of innocence under section 18, subsection 11.

So we have included, Mr. Speaker, as section 20(a) subsection 3 of the amendment and I quote:

“For the avoidance of doubt, section 18(2) of the Constitution is amended in paragraph (a) to any extent necessary to give effect to subsection (1).”

12.35 p.m.

All that means, Sir, is whereas the language that seeks to provide the exception for shifting of evidential burden may be a little vague, we are saying there is precedent in our jurisprudence for these things. Indeed, if you are arrested tomorrow, and you do not have a driver's licence, there is a shift of the burden on you, the accused, to prove that you had a driver's licence, not the prosecution, but you, the accused, must prove that you had a licence. So this is not new to our law.

Because of the nature of it, I believe that I have a duty to be forthright about the legislation which we are passing so that the public can understand it. I believe that I have a duty, particularly given the fact that I have signalled that it is our intention seriously to fight this scourge within our society. In those circumstances, Mr. Speaker, as the person who must certify that the legislation is in compliance with the Constitution, for the avoidance of doubt, I have ensured that we have included as section 20A(3) a clause which seeks to clarify the intention of this legislature so that there shall be no doubt in the interpretation of those two sections.

We are still faithful to the presumption of innocence as the basis of our criminal justice system but we recognise, as has been done in the past, that there are some facts which are best proven by the accused and, in fact, all we are doing is legislating a very common-sense approach that many juries have used in the determination of innocence or guilt for decades, indeed, some may say centuries. If a man owns property, nobody is better able to prove how he got that property than the man or woman who owns it. That is all we are doing here.

If you got it by legitimate sources you have absolutely nothing to worry about, because even if you lose the papers you can get records from your employer, from almost anybody in Barbados, and if you cannot find records you can bring oral evidence to prove it. It is for those persons who have no known source of legitimate income but who insist on living beyond their lifestyle or for those persons who have been involved directly in the commission of offences as opposed to indirectly and who are seeking to use the

proceeds of crime to finance activity in which they are involved.

I am confident, Sir, that that clause, as constructed now, is appropriate for debate as well as for passage within the two Chambers of this Parliament and is necessary to codify what is a common-sense approach by those who are charged with the responsibility of the determination of fact as to innocence or guilt, as well as to ensure that the interest of the State, the interest of the Crown, as we are still under that nomenclature, are met in its desire to fight money laundering from our society.

Section 20A also clarifies it and ensures that the standard which is on the accused to prove how he got the property does not become the standard that normally attaches to the prosecution, but is the standard that would normally attach to the accused where there is a shift of burden of proof, and that is a standard which is on the balance of probabilities as opposed to beyond all reasonable doubt. That is clearly set out, Sir, as section 20A(2), supported by long recognised case law reflected from DPP Woolmington. I am satisfied, Sir, that that is there.

As I indicated earlier, Sir, the amendments also provide for clear provisions of confidentiality and non-disclosure except where it is in satisfaction of an obligation under the legislation itself and, therefore, that unit must comply vigorously with these provisions here. It also provides for the normal governance of the Authority and the Unit, as is the case with all other statutory authorities, in terms of their accountability to Parliament to file reports of the proper accounts which shall be kept and which shall be subject to the jurisdiction of the Auditor General and, indeed, Sir, that the funds which he may use, and those which are voted for by Parliament, or which are available whether by way of grants or otherwise. I say so because there is a lot of technical assistance and grant funding in the international community for the fight against money laundering and transnational crime and this Government, as other Governments have in the past, benefitted from other cooperative nations or international entities. It is contemplated that that should continue in the future.

Mr. Speaker, Sir, I have spent a considerable time going through these amendments giving you the background to the amendments, giving you the philosophical basis on which the Government feels it must fight money laundering, both as a domestic issue to avoid the cancerous growth in our society that is fuelled by materialism, but also to deal with our international obligations.

What I have not spoken of, Sir, is the question of Resolution 1373. September 11 has changed the world as we know it forever. It brought into real and sharp focus that ordinary people going about ordinary business are truly at

risk in a world where the movement of people, the movement of information, the movement of substances and the movement of capital can be manipulated with relative ease. It therefore means that not only are you subject within your boundaries to those things which you felt you have been fighting or defending as a grievance for years but you are now subject to things with which you have no direct relationship, no vested interest, no interest, period. Indeed the horror of the loss of life and property on September 11 has brought it into sharp focus for two reasons. Not that it never happened before, because it has been happening, and we have been fortunate in the western hemisphere that perhaps we have not been the victims of it to the same extent, but anybody who reads world news or who follows global issues will know that acts of terrorism are a common thing in certain parts of the world, in the Middle East, in Africa and in Asia, in Latin America and in Europe. Europeans and English people have a different attitude towards terrorism than North Americans. I say North Americans because it is not only Americans, but Canadians.

Our lives have been so influenced by what we see on television, which is largely influenced by North America that we, in the Caribbean, largely because we have no major historic issues that have caused people to use arms on a regular basis to fight and, also, because of the comfort zone created by those in North America who have been themselves relatively exempt from terrorist attacks that we believe these things to be the things which we read about in books and see in movies.

September 11 changed that for all of us. If it did nothing else, it altered our mental landscape, our psychological comfort zone and we would have seen on television live the destruction of the World Trade Center, the two buildings as well as the bombing of the Pentagon and the loss of thousands of lives, some of whom were our own citizens and to whom we paid tribute in this Parliament as recently as two weeks ago.

The effect of all this, Sir, and especially because it was live on television, was to bring about a strong sense of commitment and also high levels of emotionalism to the fight against those who were responsible for the perpetration of those injustices on the people with whom they had no relationship or no cause.

12.45 p.m.

In these circumstances, within less than three weeks of the World Trade Center bombing, the United Nations Security Council on September 28 passed a resolution referred to as "Resolution 1373" which is as broad as it can possibly be. Indeed, Sir, it was drafted by a person with considerable drafting skills because it seeks to cover every possible loophole there could be in the battle, fighting terrorism, fighting the financing of terrorism, fighting the

domiciliary residents of those who would have terrorists living within their jurisdiction and fighting every relationship that can be traced to terrorists or financing of terrorism.

Sir, it is significant for a number of reasons. This Resolution was passed by the Security Council and the Minister of Foreign Affairs will tell you when she speaks in this debate that these Resolutions by the Security Council are mandatory. If it were a resolution from the General Assembly, it would not carry the same mandatory requirements on it, so we do not have a choice unless we want to face certain sanctions.

Mr. Speaker, Barbadians must understand that if Barbados fails to comply with the terms of the Resolution, then there will be sanctions applied to Barbados, and at this stage in our economic fortunes, we cannot afford for this to happen.

Sir, by the same token, we are happy that the Resolution speaks to percepts. It does not speak to particular circumstances but to percepts and by speaking to percepts and principles, it means that it should be applied with an even hand against all who are guilty of breaching it. Sir, if there are countries harbouring terrorists, whether small or big countries, developed or developing countries, the same rule must apply for all.

It is of note that Resolution 1373 follows previous Resolutions passed by the Security Council designed to get at Osama bin Laden and Afghanistan. Those Resolutions would have been passed earlier in 2001 before the World Trade bombing. What is significant for us is that Resolution 1373 speaks to percepts whereas those previous Resolutions spoke specifically to Osama bin Laden and Afghanistan, so Cabinet has determined to take this Resolution seriously.

I have just returned from Bermuda. I happened to be there during the Throne Speech and they have indicated a willingness to comply with Resolution 1373, as a result of a receipt of an Order in Council from the United Kingdom. Bermuda is not a sovereign country and, therefore, is not a member of the United Nations but so seriously is this matter being taken that even colonies within jurisdictions which are member countries of the United Nations have a responsibility to comply with Resolution 1373.

Mr. Speaker, Resolution 1373 speaks to states preventing and suppressing the financing of terrorists acts. It speaks to criminalising the wilful provision or collection by any means, directly or indirectly, of funds by nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used in order to carry out terrorists activities. It does not only speak of offences which have been committed, but it speaks of plans

to commit offences in respect of the financing or waging of terrorists activities.

It speaks to the power to freeze, without delay, funds and other financial assets or economic resources of persons who commit or attempt to commit terrorist activity, or participate in, or facilitate the commission of terrorist activity, or of entities owned or controlled directly or indirectly by those persons to whom I refer.

Mr. Speaker, I will make this a document of the House because anyone who knows anything about drafting, will know that this was drafted in the broadest possible way seeking to create wide and sweeping powers within jurisdictions to fight terrorism.

As I said, our comfort level lies in the fact that it speaks to percepts. It does not speak in an offensive way to particular circumstances or people, but I would also want to suggest that while we have, as a Government, established a subcommittee, which I have the honour to chair, to determine the appropriate response both to the mutual evaluation and for Resolution 1373, the truth is that it causes one to reflect that the imposition being placed on small states with limited resources such as ours truly is arduous.

The Minister of Foreign Affairs will speak to that issue as to whether there cannot be an appropriate diplomatic case on behalf of small states simply because we do not have the quantum of resources to truly meet the Resolution. As it has been drafted, it would require substantial regional and international co-operation to meet what is being asked of us.

Mr. Speaker, it is significant that the Financial Action Task Force, which I have referred to so much in this debate, which is the parent body to the Caribbean Financial Action Task Force, had an extraordinary meeting in Washington, D.C. on October 29 and 30 so that they too can seek to broaden the focus of the Financial Action Task Force beyond money laundering to the financing of terrorists activity. We now have to ensure that we have the opportunity for consultation and due process in respect of anything which is being required of us as a sovereign entity.

This Government is very clear in its objection to terrorism in whatever form it takes, the financing of it and the aiding and abetting of it. We are also very clear that as a small state we have limited resources, particularly given our continued commitment to the economic restructuring of Barbados as well as to the maintenance of social justice amidst our population. Human and financial resources have always to be applied to those two basic issues but, at the same time, cognisant of our international obligations.

We have also to ensure that we can meet, to the extent that it is possible and practical and to the extent that we can

forge alliances for regional and international cooperation, those things which help to maintain the rule of law and the right of sovereign entities to determine their future.

Mr. Speaker, there are jurisprudential, diplomatic and political implications to what is going on in the world now. One of the major implications, to my mind, is that the war against terrorism will always be an uphill battle as long as age-old grievances remain for settlement among populations, because it is significant that people will harbour from generation to generation a sense of being wronged, a sense of being unfaired such that they are prepared to put their lives on the table, even if it means that it involves the destruction of properties and lives of people who had nothing to do with it.

At the end of the day, Mr. Speaker, Sir, we have a responsibility not only to fight terrorism, but also to speak to the fact that there must be a commitment to seek out and settle some of the age-old grievances of the world, and within our own hemisphere, if we are to move forward without causing fanatical behaviour and zealotry to be a sign of modern day democracies and civilisation.

12.55 p.m.

I, therefore, would say no more at this stage, Mr. Speaker, but I believe that the dialogue and the debate of the consequences flowing from September 11 would be massive and ongoing. We would have to be vigilant and as a Government we will have to do those things which are necessary to maintain the rule of law and to maintain our international relations to the extent that it is possible and practicable for us to do. We must at the same time ensure that we do not lose all sense of those things which have always guided us as the core principles on which successive Governments have rested their perspective of development of this society and this economy.

Sir, to that extent, we have appropriate precedent in the fact that when it came to the Shiprider Agreement and the OECD Harmful Tax Initiatives, we have shown that as a Government we simply are not prepared to accept things because we are small, or because we have been told so. We will analyse critically and determine whether those things accord with the values which we hold dearly and whether, therefore, in those circumstances they should fall within the appropriate action of Government to take decisions and to act upon.

I believe that this set of amendments would have far-reaching consequences in the governance of our society and the maintenance of the rule of law. I believe, Mr. Speaker, it is important that a public education programme be developed to support the knowledge being generated in our society that murder is not the only crime in Barbados. There are, indeed, other crimes which undermine the rule

of law and do so in a cancerous way, because they are invisible to the naked eye. They are insidious in respect to the fact that they attach themselves to the creation of habit, culture and therefore have the capacity to be passed on to generations yet unborn.

I believe that those things which feed upon the sense of materialism, which feed upon the extent to which we see drugs destroying our society, have to be fought with a high level of vigour. Another occasion will come for me to speak to how we must refocus and fight the war against drugs, because drugs are as much a criminal issue as it is a public health issue, and that element of it must be reflected in our policy dimension but, not today.

If we are to fight that battle, then we must do so vigorously, particularly cognizant that we are fighting, not only a domestic battle, but we also have international obligations, and we have a cause to protect, that is the integrity of Barbados, thereby doing the sustainable economic viability of our international financial services sector as well as general investment climate in Barbados as a reputable jurisdiction.

I believe that all right thinking members of our society and, indeed, this Honourable Chamber, would agree that these sets of amendments are appropriate to reflect in law the will of the Government to fight the scourge of money laundering and transnational crime, to fight the scourge that exhibits itself as a cancer within our society, but also as a threat to the integrity of our reputation.

Sir, with those words, I am obliged to you and beg to move that this Bill be read a second time.

Hon. R. N. GREENIDGE: I beg to second that, Sir.

SUSPENSION OF SITTING

Hon. Miss M.A. MOTTLEY: Mr. Speaker, Sir, I beg to move that the House be suspended for lunch until 2.15 p.m. today.

The question that the Sitting be suspended until 2.15 p.m. today was put and resolved in the affirmative without division and Mr. SPEAKER suspended the Sitting accordingly.
1.00 p.m.

RESUMPTION

Mr. SPEAKER: This Sitting is resumed.

Mr. D. J. H. THOMPSON: Mr. Speaker, the presentation by the Honourable Attorney General this morning was, I think by and large, in keeping with the

original presentation by the previous holder of that office some time ago, when the substantive Money Laundering Bill on December 8, 1998 was passed in this Honourable House. I think at that time the then Attorney General pointed out that that substantive piece of legislation would have extended the jurisdiction of magistrates and would have enhanced the reach of the State into the activities of banks, financial institutions, employees, as well as Government.

Sir, an important component of the debate at that time related to the impact of drugs and the proceeds of drug trafficking in relation to money laundering in the world. The presentation of the Honourable Member for St. Michael North East was in keeping with that and today we would have seen by the Government's amendment to this Bill further attempts to consolidate the reach of Government into the activities of private citizens, financial institutions, businessmen and professionals, relative to financial transactions.

Mr. Speaker, many years ago, a Member of Parliament, whoever he was, raised concerns about the offshore sector and about the impact of the offshore sector relative to the presence of the Mafia or money launderers in a country. The fact that they raised that concern should not be dismissed out of hand as an irrelevant consideration. The reason why there needed to be a subsequent tightening up in relation to money laundering legislation and other pieces of legislation, was because there are many jurisdictions in the world which have been overtaken by mafia-types, drug lords and by persons involved in other activities that require money to be laundered.

The fact that Barbados has not yet detected money laundering of a sufficient degree, does not indicate that there is not money laundering taking place in Barbados. It very often depends on the contacts that have been built up and on the manner in which your jurisdiction, over time, is opened up to scrutiny.
2.20 p.m.

Now, the real concern though which I think we might have, is that there may be activities taking place in Barbados right under our noses which may very well constitute one of the offences. In fact, I would go as far as to say that, based on the new amendments we are passing today, there are a large number of persons who might have left Barbados this week, without complying with the terms of the Exchange Control Act, and jetted off to Miami or some other country, with more than BDS\$10,000 in their possession.

People go to Miami at Christmas time, without credit cards and can buy washing machines, refrigerators, furniture or a big colour television at the cost of \$1,500. Where do you think they got the money from? Therefore, one has to be extremely careful when one seeks, without adequate public

education – I would put that caveat in there because the Minister has accepted that it is necessary – to impose new draconian measures, including the shifting of the burden of proof onto the person who is found with, in excess of BDS\$10,000 in foreign currency, without very carefully explaining and being very rigorous in your public education.

I, and every one of us in here, know that there are Barbadians who spend a whole year collecting well in excess of \$10,000 in foreign exchange and jet off to Miami at Christmas and return with two or three containers full of items, without reference to the Foreign Exchange Control Department, on their own private resources and legitimately so, but not easily identifiable in many cases, because many of the activities they are involved in are informal activities for which they cannot produce receipts. They do not pay NIS, Income Tax, VAT returns – nothing. Therefore, in describing that scenario, Mr. Speaker, Sir, I would like to reinforce the point made by the Minister that it is vital and critical that the implications of this piece of legislation, if it is going to be rigorously executed, need to be brought, very clearly home, to the average Barbadian.

As the Minister was speaking, I recognized the extent to which this is going to be of great concern to a larger number of persons than one first thought of impacting on the Money Laundering legislation. Transactions above \$10,000, whether within the banking system or informally, the exportation of foreign exchange whether officially, or carried on a person to a value of \$10,000 which, when one considers, is a very small amount to travel with, obviously among Barbadians. These are going to create some concerns and that is why I think it is vital to have that public education.

It is also ironic that for a country like Barbados that had in place exchange control regulations for most of our modern history, certainly even before Independence, that we have not gone full circle. Methods which were previously used to identify the movement of foreign exchange via the Exchange Control Authorities, are now being reimposed on Barbados via the criminal jurisdiction, by setting up a new entity which would have powers which were recently similar to those which the Exchange Control would have enjoyed prior to the rationalisation of exchange control rules in Barbados. But what we are seeing is that small countries like Barbados, were pressured to remove exchange controls in order to liberalise their foreign exchange arrangements to give people easier access to foreign exchange so as to facilitate business transactions. Yet by way of money laundering legislation, one is almost reimposing on the system, monitoring and other mechanisms which previously would have been the provinces of the exchange control authorities.

The Government is also imposing more serious penalties and also giving the State a much larger power than it enjoyed under the previous exchange control regulation.

By way of this legislation, the Government is also imposing burdens on citizens which may go against their constitutional rights. That is the sum total of what the Attorney General would have pointed out in here today during the course of the debate.

Mr. Speaker, Sir, I think it is desirable for us to have a well-regulated financial system if Barbados is to continue to be a major player in the International Business and Financial Services Sector. It is also important for us to meet our international obligations, but I will say that I still find it remarkable that, out of one mouth, Government is able to speak so readily about sovereignty, standing up for everyone, they are not going to do anything that would encroach upon the rights and time-honoured traditions of Barbadians but yet, at the same time, in the context of this legislation and I have no difficulty with it, if it means that the Act has to be carried out and that Parliament believes very strongly that this is the only way that it can continue to monitor and develop the offshore sector to insert into the legislation a provision which says that one section of the Act alters the Constitution to any extent necessary to give effect to the provisions of this legislation.

I remember many years ago, Errol Walton Barrow vehemently objected in the Tenancies Freehold Purchase Bill debate to a similar provision being inserted in a Bill. As a constitutional purist, I think that is what he called himself, his view was that where one is going to affect the rights of citizens, that it should be clearly defined as to the extent to which those rights are going to be affected. Therefore, he was very reluctant to support a piece of legislation which had a clause in it which said that the Constitution is amended to any extent necessary in order to give effect to the provisions of this Bill.

What then followed from the Tenancies Freehold Purchase Bill were a series of amendments down through the years largely because, in my view, it was not very clear in the mind of the Government exactly what rights they wanted to give, and to whom.

There are still constitutional purists who believe that where there is a written Constitution, that a provision like that goes against the grain of having certain clear and defined rights. In other words, if the Constitution is going to be amended, one must very clearly say what rights are being reduced to give effect to a piece of legislation like this.

Therefore, by having what one might call an “escape clause” that said anything that is done in this Bill amends the Constitution sufficiently to give effect to this Bill, that neither the legislators, nor the persons on whom the Bill impacted, really knew the extent to which those rights were being altered to give effect to that piece of legislation.

Likewise, there is a scenario here, where the Government has resorted to a provision like this.

2.30 p.m.

I believe that parliaments established under written Constitutions, should be extremely reluctant to broadly amend the Constitution. I believe our job should be to identify up front, for the benefit of citizens, and particularly, where our legislation is being driven by external entities or external trends which you may have no local or domestic control over, that you should be very clear, to the extent in which you are willing to reduce and circumscribe the rights of citizens to give effect to this kind of legislation.

Sir, you cannot talk glowingly and handsomely on the one hand and at the same time go the route of giving the impression that, where necessary, you will alter the rights of Barbadians to any extent necessary to give effect to a piece of legislation and, Sir, that is my only concern.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, on a point of elucidation. I am not sure whether the Honourable Leader of the Opposition is reflecting what was indicated in my speech. In no way can you seek to confuse the statement which says that, we hold the sovereignty of this nation sacrosanct with the fact that this Parliament has the power to amend the Constitution at any time that it so desires by way of the two-thirds majority. Having said that, the reason for the Constitutional amendment has nothing to do with the fact of our trying to fulfill international obligations.

The reason for the Constitutional amendment, Mr. Speaker, has to do with the fact that it is an aged-old principle of the law, something with which I would have thought the Leader of the Opposition would have been well familiar, that where there is a person who has a peculiar knowledge of a set of facts and circumstances, that it is acceptable to shift the burden of proof on that person, so that person may determine and give evidence of that peculiar set of facts and circumstances. And where that burden is shifted, so established is it, that the standard of proof which attaches to that person, is not the normal, beyond reasonable doubt standard of proof that attaches to the prosecution, but the standard on the balance of probabilities, which is a lower standard of proof.

So that we are not amending section 18 of the Constitution to satisfy any international body or any international obligation. We are amending it simply because when we looked at how we will prosecute the cases from the evidentiary perspective, it was absolutely clear that the person who would best know the source of the property is the accused, who owns the property.

In those circumstances, like a driver's licence, where if you are charged with driving without a driver's licence, the

person to whom the burden shifts is the accused to prove that he has a valid driver's licence. When that evidentiary shift came, Mr. Speaker, we were not satisfying international obligation, so I do not know how the correlation can be made in this instance and therefore I seek, Mr. Speaker, Sir, to elucidate on these points.

Mr. D. J. H. THOMPSON: Mr. Speaker, I am not in here to engage in public relation exercises, nor am I going to get myself into any Archean debauched debate about strict liability offences, about the manner in which you can amend the Constitution or about whether sovereignty is being diminished in anyway. Mr. Speaker, this is a sovereign parliament which has a right to amend the Constitution. No one has doubted that. The point that is being made is when you amend a constitution and do not clearly spell out the extent to which the amendment affects the rights of citizens, there are Constitutional purists who have argued that where you have a written constitution, you should always avoid that route. That is nothing new. That is a philosophical and some say theoretical argument that has permeated Constitutional Law from the time you had written Constitutions which were being amended to any extent necessary.

I remember in the same Tenantry Freehold Purchase Bill that the then Attorney General...

Aside.

Mr. D. J. H. THOMPSON: That is the same point I have been making. You came in at the end of the point and got hot under the collar because you were in a public relation exercise which I am not...

Aside.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, on a point of order. The Honourable Leader of the Opposition is out of order. The reality is I did not come in at the end of the point. Mr. Speaker, he first made the point about the fact relating to sovereignty. He made the point about the Tenantry Freehold Purchase Act and amending to any extent necessary. Then, he sought, as is his usual role, to try and come back and link the two by saying that a Government that stands up and gives a lot of noise and talks about public relation exercise and beating its chest about sovereignty, is now also trying to bring a constitutional amendment. It is the linking of the two, to which I objected.

Mr. D. J. H. THOMPSON: Mr. Speaker, that is not out of order. I am entitled to form any impression, as a citizen of this country, of any act which a Government takes, independent of how the Government describes it.

It is not my job to accept the official line of the Government and that has never been my responsibility. The Government has put its case and the case is suspect, in my

view. If there was ever a time when the burden of proof would have to shift, it is now. The Government must now explain, why it is that it jumps up and down constantly, giving the impression that it is in the forefront of fighting for the sovereignty of Barbadians, but yet every time it wants to pass a piece of legislation like this, it says that we have to pass it. They want the Opposition's co-operation and this has been so from the original Bill, because we have to meet commitments and obligations at an international level, not to the people of Barbados, but commitments and obligations, either under conventions or as the result of the investigatory work of entities external to Barbados which are monitoring the way in which Barbados conducts its activities.

Mr. Speaker, I do not need to pretend that it is not so, and I am not criticising the Government yet, for that. I am saying that the Government needs to be realistic and, instead of posturing on the issue of sovereignty, if you want to be involved in the international business and financial services sector, get real and tell the public that there are some things you will have to do, as long as you want to go in a certain direction, to comply with international obligations. We cannot get that level of candor and frankness from the Government.

The Government on the one hand is on a public relations high, talking about sovereignty, and we are in the vanguard fighting out there for the rights of small states. Your offshore sector is on its knees now. The number of registrations of IDC, foreign sales corporations, societies with restricted liability, exempt management, exempt insurance companies, and offshore banks have been had.

Now, the Government says that it was able to stave off the impact of the action of the OECD, that Barbados was in the vanguard of staving it off. Yet our sector has declined. I believe of all the economic sectors, the decline in the offshore sector is even larger than the percent of decline in sugar, because in sugar, you had a 47 per cent reduction in production over last year and in the offshore sector, it was more than 50 per cent.

Aside.

Mr. D. J. H. THOMPSON: In the face of that, Mr. Speaker, it meant there was something wrong with our strategy. We have already said on this Side what was wrong with our strategy. The Government of Barbados identified the action the OECD wanted to take and the Government of Barbados set out on a mission to let the world know what the OECD was going to do, on the pretext that it wanted to get the support of other countries in its effort to stop the OECD from doing what it did.
2.40 p.m.

People did not know what was being done and because of our active public relations campaigns, we contributed to shooting ourselves in the foot by identifying what the Organisation for Economic Co-operation and Development (OECD) was seeking to do against countries like Barbados. So the OECD did not need to say anything.

The point I am making is that very often these things can only be seen from hindsight. I said that. We supported the Government's action when they took it, so let us understand that. The point I am making is that the Government is too sensitive and views everything as a criticism but unless they understand what we collectively in Barbados did wrong then the Government is not going to find the right solution.

In my view, that situation was not handled as well as it could have been because the Government saw it as an opportunity to trumpet its vanguard work in terms of small states and sovereignty. So the net effect of all that we did was to have the number of registrations in Barbados, but if we continue on this trend we will have no offshore sector in a year's time despite the fact that the full brunt of the OECD action did not take place against Barbados.

Therefore, once we understand that is the case, it either means that we have to change our strategy and be realistic and say that we do or do not want an offshore sector. Despite the fact that Barbados is a sovereign nation, we are willing to do things including where necessary in a very limited way to amend our Constitution to effect these specific rights that Barbadians now enjoy and then proceed to take fresh guard relative to the development of the offshore sector in Barbados.

What I am saying is that you can choose one or the other. You can say let us abandon the offshore sector because it is not worth the things that we have to go through such as the impact on our sovereignty, the psychology of our people or the notion that we are a small nation *et cetera* but you cannot have it both ways. You cannot get up and argue from a position that your Constitution is sacrosanct, that the rights of your citizens will not be infringed, that Barbados is a sovereign nation and we will do nothing to alter the character of our country to give in to the decisions of international bodies or trends set outside of Barbados and then come to Parliament and amend the Constitution to any extent necessary to give effect to provisions that are obviously desirable in that context and then argue that your sovereignty is still completely intact.

Your sovereignty is relative and, in this context, it would be better, I think, if the Attorney General, who in this regard is much more intelligent than those other people who have been imparting that philosophy, would accept that for the Financial Action Task Force (FATF)

programme to continue and for Barbados to be part of the world of the offshore sector, that there are elements of our sovereignty that are going to have to be compromised but she, as the principal lawmaker in Barbados, needs to tell us which ones she is willing to put before her Cabinet to be compromised and then we can have a debate which would be helpful.

My only concern, as I said, and I will revert now to the content of the Bill, is that it is not always tidy, and it certainly is a matter that constitutional lawyers have raised relative to countries that have written Constitutions, to have a provision that amends a section of the Constitution at large, because even if you look at it, this section is sufficiently significant, she would have to accept, and I would, that it is in relation to this piece of legislation ...

Asides.

Mr. D. J. H. THOMPSON: No, no, I take your point. The point I am still making is that at the end of the day what this legislation has done is reduced everyday transactions by Barbadians. People who go to the Airport with US\$7 000 to go to Miami and shop, they in essence by their conduct, if they have not complied with the provisions of the Exchange Control Act, will come under the provisions of this legislation.

The point I am trying to make is that this legislation will affect more people than might have been originally intended. In other words, on a first reading of this legislation it did not immediately dawn on me the impact it would have, and that is why I say I support the public education programme which is vital because this piece of legislation, as I said, can have some pretty far-reaching effects on a large number of people who are involved in itinerant trading, or people who are building houses and going away to buy tiles, fridges and stoves who may be only able to attract a \$1 500 limit on their credit card. Therefore, the only way they can engage in that kind of commercial activity is by carrying away large sums of cash because they may not want to go the route of getting the Central Bank of Barbados permission for those activities.

Asides.

Mr. D. J. H. THOMPSON: Yes, but who does it. The point is that it is all right for you all to act as if simply by passing this legislation those habits will stop. If you want to stop people from doing this, say so. If that is why Government is passing this legislation to stop people from going overseas, well, say that.

Hon. Miss M. A. MOTTLEY: On a point of order. Mr. Speaker, the Leader of the Opposition, I can only

assume is being deliberately mischievous. My point, Mr. Speaker, is that the legislation deals with the proceeds of crime. The constituent element of the money laundering offence at section 3 of the substantive legislation, if the Honourable Member takes the time to go back and look at it, in the 1998 Act, is that the property should be the proceeds of crime.

This legislation is not meant to get at Bajans who are travelling. There has always been a requirement under the Exchange Control Authority to deal with foreign currency over a certain level. Indeed, many of the countries to which they are travelling also require people to attest with their signature attached whether they are carrying money or property in excess of \$10 000.

This is, therefore, not a witch-hunt against people who are itinerant vendors. If they have proper sources of income or property, that is fine, but they have to comply with other regulations which may be separate from this legislation. As the Honourable Member has said, the Exchange Control Authority has always, since modern Barbados has had a Central Bank, required that those regulations be complied with. There has been some liberalisation but the reality now is to tighten up things, and people are tightening up again, rather than liberalising.

Mr. D. J. H. THOMPSON: Mr. Speaker, Sir, we live, I assume, in the real world. The whole reason why people are itinerant vendors and part of the informal sector of the economy is because they are not involved in formal transactions.
2.50 p.m.

They are not obviously paying income tax, they are not obviously within the formal system and there is still a large number of Barbadians engaging in that kind of activity. What the Honourable Member for St. Michael North East said...

Aside.

Mr. D. J. H. THOMPSON: That is not my obligation. The Government just spent millions of dollars giving the VAT office a new facility to improve the collection of VAT and I agreed to it in the last Budget. That was their principal objective, to collect more VAT. That is not my responsibility.

What I am trying to say is against the background of what the Honourable Member said relative to the constituent element of the offence, you now bring me back to the same concern I raised previously which is section 20A(1):

"Where a person is charged with an offence under section 20....."

Let me say what section 20 says because I am going to have to be more careful now in going through these provisions. It says:

“Any person who engages in money laundering is guilty of an offence.”

It sets out the fines and the penalties applicable:

summary conviction – a fine of \$200 000 or to imprisonment for 5 years or both;

conviction on indictment – a fine of \$2 000 000 or imprisonment for 25 years or both.

What the Government has done to make it easier is to say that a person charged with an offence under that provision:

“... and the Court is satisfied that the property in his possession or under his control was not acquired from income derived from a legitimate source, then it shall be presumed unless the contrary is proved, that the property was derived from the proceeds of crime.”

Sir, if the Honourable Members on that Side are arguing that a person who pays income tax, value added tax and so on are the only people involved in legitimate business in Barbados, then it means that everyone of those persons involved in itinerant informal activity that the proceeds found in their possession would have to be deemed as being from an illegitimate source. That is only logical. It is precisely that point that I was seeking to make from the outset of this debate. That is why where section 28 shifts the obligation onto the person who is accused for any offence whether they are found carrying \$10 001 in foreign exchange or \$3 million in foreign exchange then one has to ask the question; is it really desirable to amend the Constitution to affect every one of those categories of persons? That is the simple question one has to ask.

Where the amount is low, the penalty is grave under this legislation. It would seem to me that the Government itself should want to protect the citizen who may be involved in a much smaller transaction in which the only reason why he is unable to demonstrate the legitimacy of the transaction is because he has been involved in informal activity, itinerant trading and that kind of thing. The Government should not want the provisions of this legislation to come down so harshly on them.

The whole reason why Government moved to a situation where you removed the Exchange Control requirements and liberalised it was because you were telling people in Barbados that it was acceptable for them to have access to a certain amount of foreign exchange. In fact, we

were saying that it is desirable for Barbadians to have access to a certain amount of foreign exchange to carry out their business activities, and legitimate business activities, I use in the widest possible context.

Mr. Speaker, as I said, there are concerns here that have to be raised. It does not affect my view about the Bill itself, or about the desirability of seeking to tighten up, but these are important concerns, and no Government should be so cavalier as to brush them off. There needs to be an element of compassion and understanding, and legislation needs to be relevant to the average activities that citizens are carrying out to ensure that it does not impose additional unnecessary hardships and burdens on people carrying out their normal business activities. That was one concern.

Mr. Speaker, Sir, the point I was making about the reintroduction of foreign exchange reporting, through the back door, but applying greater penalties that existed under the original Exchange Control Act is a very relevant one and at a policy level. As I said earlier, the Government needs to be clear that by reintroducing money laundering legislation in a situation where you have removed the upper limits for which citizens are entitled to hold foreign exchange, that you do not find the two pieces of legislation clashing. In other words, you remove requirements under one piece of legislation but reintroduce them under another piece of legislation. That is one point.

The second point is that despite all we may see here, the Central Bank at one time was notoriously inefficient in processing foreign exchange permission and application. I do not know what the status of that department is now. When Trinidad removed exchange controls they cleared a whole floor of the Central Bank building just by one Act and redeployed all of those public officers in other parts of the Government, and were able to carry on the business of Government and managing their economy even more efficiently. If you were a student in Trinidad and you ever had to apply for exchange control permission to take money back out, even if you had to apply for a tax clearance certificate, you could not get it in less than five days unless you knew somebody in the relevant department and were able to persuade them to issue the clearance in an earlier time.

Likewise, here in Barbados, the Central Bank was one of those entities that was identified by those persons who looked at the business environment in this country as an impediment to doing business. In fact, the Honourable Member for Christ Church South used to identify the Central Bank and the Town Planning Department – I do not know whether he still does – as two entities that needed to be looked at because there were impediments to the speedy investment of funds in Barbados.

You had all kinds of trouble when people wanted to repatriate profits and by and large had never carried out the kind of public education programme that was necessary to help citizens understand what their obligations were under the Exchange Control Act.

I am happy, Mr. Speaker, Sir, that the Government has finally accepted that the impact of the recent OECD initiative has been seen for what it is. The Honourable Member for St. Michael North East said quite clearly, and I agree with her, that because of the initiative, there were a large number of investors who were looking with great suspicion, at individual domiciles.
3.00 p.m.

The OECD initiative certainly had an impact in the Caribbean. At one time they were talking about Switzerland and they identified specific jurisdictions.

Therefore, there are some domiciles in the Caribbean that have not even been able to get their offshore sectors off the ground. There are countries in the Eastern Caribbean that register five IBCs a year after spending millions of dollars inviting consultants, setting up regulatory offices, and putting in place the most rigorous financial inspection arrangements. As I said, a country like Barbados that was far advanced had a lot more to lose and has suffered a lot more as a result of the particular initiative, that is another part of the story that is often missed. Many of the more matured offshore jurisdictions rushed to comply with the OECD. For example, the Prime Minister of the Bahamas did not even go to CARICOM Heads of Government Meetings but decided to stay home and pass all the necessary laws.

Asides.

Mr. D. J. H. THOMPSON: Of all the countries that had most to lose, Barbados joined with the group in the Caribbean which had young underdeveloped offshore sectors, ours, to my mind, was at the intermediate stage. We got caught in a vice grip because the stance we took had the impact, to my mind, and this was only determined from hindsight, of reducing the amount of business that would be attracted to our part of the region.

It caused a lot of speculation. There was justifiable criticism of activity in Grenada. Banks were being closed down in St. Vincent. There were problems in Anguilla and St. Kitts, but Barbados did not have any of those problems, but would have suffered a diminution of its business because of the stance we took.

Therefore, we need to work out what the direction is for the offshore sector because the amount of money which the Government identified for its public relations campaign outside of Barbados is a drop in the bucket. If we really

want to get the sector going again, this Government is going to have to identify serious resources. Government is going to have to do that because whereas ten years ago if there was diminution in business, the private sector would have come in to fill the gap because it was basically a private sector driven economy. This Government then took the decision to shift the resources so that the Government itself was putting more into the promotion of the offshore sector with less results, and a lot of the private sector companies that were putting money into the promotion withdrew significant resources.

I am saying that it was a major error on the part of the Government because more should have been done by the Government to encourage the private sector itself to increase the amount of money it was putting into the promotion of the offshore sector. We went the other route and the only way we will recover is if Government itself invests significant resources in promotion of Barbados as a clean domicile for doing offshore businesses, and also for promoting what aspects of offshore business are available and are acceptable to the international community in compliance with the United Nations Resolution, the FATF and all of the other obligations which are so important.

Mr. Speaker, I have not seen a copy of the United Nations Resolution and, therefore, I cannot speak to what it says, but the point that needs to be made is that small countries like Barbados now find themselves in a position of having to find significant resources not only to undertake our obligations to the international community, and by extension to ourselves, but they would also have to pass new laws, update old laws, put in place a regulatory framework and on top of that we have to look for new significant resources to do promotion of our offshore sector.

I think it is significant that Government itself has not yet fully costed, for the benefit of this Parliament, the impact that it is going to undertake either by way of the regulatory framework, what new resources, personnel and expertise, would be required, but it has not been able to identify, coming out of the Ministry of Economic Affairs, a very clear strategy for the promotion of the international business and financial services sector and how they are going to get the registration of the various investment vehicles available in Barbados back up in the short term.

Whereas we have seen what efforts are going to be made in tourism and what is being offered to the agricultural sector to ensure that domestic providers of those services are able to keep themselves afloat, much of what has been identified for the offshore sector is merely icing on the cake and relates to very limited amounts of funds being made available for external promotion. If it was true that the private sector was instrumental in building this sector, then the Government itself needs to find a way of getting

resources of one sort or another to those persons who have the experience and the institutional memory of building our international business and financial services sector and working in partnership with Government to ensure that we are able to save the sector, and the persons who have jobs in the sector, from being dislocated by the events prior to September 11 and those events of September 11.

Mr. Speaker, those were some of the principal concerns I had about this matter. I hope that other members would be able to assist in advising whether they believe that limit of \$10 000 is too low. I would like to know how the limit was set. Is it arbitrary or is it an international norm that is applied?

In Barbados the bank teller gives a sheet of paper if you are depositing \$10 000 in cash. I know that in Barbados when making a bank transaction, you are required to sign a sheet of paper which the bank teller would give you if you are depositing \$10 000 or more in cash.

3.10 p.m.

Asides.

Mr. D. J. H. THOMPSON: I believe that is something that needs to be looked at and be sure that we are not criminalising what, on the face of it, may be legitimate activity. While we understand that Barbados has international obligations, where those obligations are going to change the way we do business in Barbados, we should explain carefully to our own citizens what the impact of those obligations will be.

Sir, other than that, I have no problem with the Bill. I told the Honourable Attorney-General that. I believe that the introduction of this Bill was in keeping with the philosophy that informed the previous piece of legislation. I raised my concerns for what they are worth and I hope that those responsible would reflect on them. I believe that a piece of legislation like this has to be judged against how it is put into operation, and we would see whether the concerns which I have raised are valid and genuine, or whether Barbadians will modify their behaviour sufficiently to comply with the provisions of this legislation.

I thank you, Sir.

Hon. Dr. R. L. CHELTENHAM: Mr. Speaker, I rise to commend the lucid wide-ranging piece of legislation of the Honourable Attorney General on this matter. I lend my support for the provisions of the Bill under discussion. Mr. Speaker, they are not provisions of the Bill that can attract a genuine divide of opinions. Sir, not all the provisions are without difficulty. That much must be said. Generally speaking, the thrust of the Bill has attracted the support of

both Sides. I think, at the end of the day, that is the important point about the amendments.

The debate is an important one for two or three reasons. Firstly, it has direct implications for the operations and the future of our offshore financial sector. Secondly, it may have large implications for the average Barbadian. I do not think the Honourable Leader of the Opposition was attempting to be a scaremonger in any way and, indeed, we must resist that.

The provisions have been widely drawn. Although the intention is that only proceeds of crime should attract suspicion of criminal activity, the way in which the provisions are drawn may give rise to an interpretation whereby activities that money that does not result from illegal activities, nevertheless attracts some measure of suspicion.

The third reason why the debate is important, is because one of the provisions of the Bill amends the Bill of Rights, and any amendment to a Bill of Rights should attract all serious people within the community. It must be said, with respect to the amendment to the Bill of Rights, that nothing radical is being proposed or indicated. Sir, it has been pointed out by the learned Attorney General, that the provision, which has been introduced out of caution, and out of caution only, reflects a position of common law which has been in existence for hundreds of years. It is an evidentiary principle which is known as *per curiam*, which has been explained since this. For example, if you are operating a factory in breach of a licence, the fact that you are operating a factory, assuming you are charged and brought before the Court, the burden shifts to you to say whether or not you have a licence. Sir, that is a matter which is peculiarly within your knowledge.

It is centuries old. It has been reflected in several of our legislative provisions with respect to driving without a licence or driving without insurance. Once certain elements are established once you are charged, the burden shifts to you, the accused person, to say whether or not you have an insurance policy or a licence to drive. There is nothing radical. There is nothing far-reaching in the constitutional amendment and to that extent, it ought to attract neither suspicion nor worry.

Mr. Speaker, money laundering has been a matter that has assumed large providence in many countries around the world in the last 20 years. It has assumed an added profile and having providence following the events of September 11, following which we have come to understand that it is now one of the well-established techniques for terrorists to be funded across their boundaries, Barbados has, like many countries in the world,

on its statute books anti-money laundering legislation. We did it in 1998 and we are today making further amendments to that legislation.

Although there is a lot of talk about this money laundering, not much research has been done on it, and no one can say for sure what is the quantum of "hot" money that flows around the world. What are the specific features of cities that are at the centre of money laundering? None of that is particularly well-known, but it is guesstimated that hundreds of billions of dollars flow around the world every year, which is really illicitly sourced money that finds itself in the economies around the world and used for legitimate purposes.

Sir, with respect to the Bill before us, it can be looked at in relation to two dimensions. Firstly, what it seeks to do and what are the elements of the provisions? Secondly, its relevance to the second mutual evaluation exercise which is about to take place in Barbados between November 12 and 15. Perhaps, we need to start with that and to make the point that the Caribbean Action Task Force, of which Barbados is a member, is really the agency that superintends in this area, anti-money laundering activities, legislative and otherwise.

In 1977, when there was the first mutual evaluation, Barbados came out of the exercise with flying colours at a time when the legislation itself was not on the statute books, but then we were able to indicate what we were about to put on the statute books. On this occasion the task force on the evaluation is likely to be far more rigorous and much more is expected. We will now be asked, for example, what are our administrative provisions in support of the legislation? What protocols have been fashioned to inform and guide the behaviour of stakeholders in the area? To what extent to which we have an adequate number of persons to manage the agency? Also making sure that the legislation works and it is not just on the statute books without being implemented. These are some of the matters to be looked at on this occasion.

It is important we pass the amendments under discussion today, because that will go some way towards satisfying the top requirements of this second evaluation. I merely suggest that we need to go little further. At present there are only two or three members who constitute the staff of the Intelligence Unit. We need to indicate to the Caribbean Action Task Force how many additional members we propose to employ and within what time frame.
3.20 p.m.

We need to indicate what are those countries and by name, with which we propose to have information and intelligence sharing activities within a given time and what are the techniques they are going to be using in order to secure that.

I notice that we are soon going to have an amendment to the Commonwealth Act which deals with the sharing of information among the Commonwealth countries. The Mutual Assistance Act, within a few days is going to have an amendment to it, but as far as I can recall, there is only one country with which we have a bilateral treaty relating to the sharing of information and intelligence and that country is the United States of America.

Provision is also made for the adoption of the UN Provisions dealing with the sharing of intelligence and information, but insofar as these several mechanisms may not cover all of the countries and, to be specific, Latin America and elsewhere, which may find it necessary with the sharing of information, I would like to propose that the simple Memorandum of Understanding can be adopted as one technique that may extend the broad period of what has already been indicated by the Honourable Attorney General.

The Memorandum of Understanding is easy to fashion and implement and, basically, it contains only two provisions, Mr. Speaker. It sets out the procedure for the requesting of information in intelligence and in the second case, it indicates quite clearly what information that cannot be requested. That is very important because we have a written Constitution; a Bill of Rights which gives clear protection to citizens and not all information requested can be supplied.

In speaking about the Constitution, I think we have got to make the point about the changing values in the civilized world. Money laundering has been regarded as such a reprehensible and dangerous activity, in the sense that it can undermine the very law enforcement agencies that we have. It has given rise to anti-money laundering legislation between the rights of the individuals on the one hand and the protection under a Bill of Rights, and the interest of the community.

Sir, recently, the Courts have been resolving those tensions in favour of the interest of the community. So notwithstanding the fact that we have the Bill of Rights, courts everywhere in the civilized world, have been resolving this tension, to which they are required, in favour of the interest of the community rather than the rights of the individuals.

Sir, I have no doubt that under our Constitution, as presently framed and under section 18 of our Bill of Rights, that what is proposed here today would have found no resistance by the Courts. Nevertheless, the learned Attorney General was right to remove the doubt and place the legislation clearly beyond any doubt by amending the Constitution. It has not been amended in any radical way. We have never been totally consistent with the common law

that we have noted for centuries and, to that extent, no one ought to be complaining about what is being indicated here.

Sir, to get back to the second evaluation which is due to be held during 12th to 15th November, 2001, by the Caribbean Action Task Force, it is important that Barbados passes the test. Over the last two years, the offshore financial sector has experienced a prolonged instability and uncertainty. In the first place, there was considerable doubt as to the precise provision affecting the offshore sector between Canada and Barbados which led to the falling off of business from Canada. Then we had the OECD affair, and the defiant role which Barbados played in that regard but the fact of the affair caused uncertainty and a further falling off of business.

In more recent times, we have had the ruling of the World Trade Organisation, that foreign sale corporations are anti-competitive and they have been outlawed as a result. Barbados, since 1985, has put legislation on its statute books allowing us to have foreign sale corporations here, and we have attracted considerable business from the United States of America in particular, though elsewhere too, in the area of foreign sales corporations.

Therefore, for the reasons indicated, we have suffered a decline in this sector and given the stellar role Barbados had played in resisting the OECD, it is important now that we pass the test, or else it would appear as though in resisting the OECD, we had something to hide.

Sir, the offshore financial sector is an important prop in the Barbadian economy. It is therefore important that, following the second mutual evaluation to be held in the next few days, Barbados does not emerge with any adverse commentary as before.

Sir, getting back to the Bill, we have put the Authority, of which the Intelligence Unit is a part, on a statutory footing. That is very much welcomed, though in my view, we have not gone far enough.

Antigua has perhaps the toughest anti-money laundering legislation in the Caribbean. Their drug control policy and anti-money laundering agencies have been put on a statutory footing and have been given wide powers. For example, it can initiate criminal prosecution. It can take initiatives in seeking freezing orders. It can initiate confiscation orders, *et cetera*.

In the amendment before the House, we have not gone that far and it seems to me that, notwithstanding, the wide powers of the Director of Public Prosecution (DPP) to initiate, continue, discontinue or terminate prosecutions, he

is already so busy, though this does not affect his powers for that at anytime he can intervene.

The Authority should be clothed with enough competence to see after its own affairs and to develop in-house, and with the assistance of outside counsel, a certain expertise which will allow it to get on with the business of fighting money laundering activities, but matters have still got to be referred to the Commissioner of Police, or to the DPP. This is fairly specialized work and they already have their hands tied, therefore, I would argue for an enlargement of the powers of the Authority so that they can operate in the areas indicated. It is questionable too, without making the Authority a body corporate, whether it really has the limited power to do what is there indicated in the legislation.
3.30 p.m.

Now, in addition, Mr. Speaker, the legislation seeks to put on a statutory basis, the access of the Director of the Financial Intelligence Unit and Authority (FIUA), to information from a large range of the Government and Government entities. Sir, so from Director to Director, Head to Head, the Income Tax, the Customs, the Immigration, the Central Bank, the VAT Unit and so on, can be approached for information. All of that is important, but more important too is that there should be a free flow of information between relevant agencies in the country, within the region and outside the region and that too is made provision for in the amendments.

Sir, in those several respects the legislation is very much to be welcomed and, as I indicated earlier, it has my full support. There are one or two points of concern which I ought to mention at this point. One has to do with the small threshold, as it were, \$10 000 that is the point at which suspicious activity has been stricken. It is not a lot of money and I think it would cause considerable disquiet as is, even though the disquiet should only arise if the money is the result of illegitimate activity. I would like to suggest that it be lifted to something like \$20 000 or \$25 000.

There are many people who travel once or twice a year to the United States of America and buy goods for household consumption, including at times, furniture, a TV or a piece of electrical equipment, who accumulated \$10 000 within the family and travel for the purpose indicated. That too could be a breach, if it is not declared on the Immigration Forms, the forms you fill out on the Airline or when you arrive.

It does appear, Mr. Speaker, that those of us who earn, legitimately, our money abroad, once it is in excess of \$10 000, we have got now to declare it with all sorts of implications. Sir, that is a small amount of money, a very small threshold which triggers the provisions of this Act. As has been indicated by the learned Attorney General, a programme of public education is very important. The Bill

has implications for the ordinary Barbadian and it is important that they should understand what we do here in their names and on their behalf. Sir, to that extent, I would urge that this programme of public education starts, like yesterday. It is very important and it ought not to be delayed more than is necessary. Every medium should be used in getting the relevant parts of the Bill to the average Barbadian across in simple language that can be understood by all.

I will give way at this point, Mr. Speaker, to other Members who would want to make their contributions but I wish to say again that this is an important debate. The Bill has far-reaching implications and I am glad that the Opposition has seen it necessary and in the public interest, that its support should be held to this matter before the House.

Mr. SPEAKER: Would you join with me in welcoming the Honourable Prime Minister of St. Vincent and the Grenadines.

Hon. R. N. GREENIDGE: Mr. Speaker, I will be fairly brief. I want to begin Sir, by supporting these amendments to our Money Laundering Act. I want to begin, Sir, by saying that last year, when the OECD targeted certain Caribbean countries, approximately some 17 of our leaders protested very strongly. They protested mainly against the methodology and the approach used by the OECD, but they never sought to say that some form of money laundering does, in fact, go on in the Caribbean.

Indeed, I believe those of us who know the business world would be hypocritical, if we want to be self-righteous, to say that it does not happen here. I want to say too, Sir, that the drug dealers are not the only ones involved, because a lot of fingers have been pointed at drug dealers, but there are others involved as well.

We get people, Sir, who deliberately seek to avoid taxation in their jurisdictions, and we also get cases of divorced husbands and divorced wives who are trying to avoid property settlements. We get doctors who are facing malpractice suits and such persons who keep very large sheltered accounts in banks and in overseas jurisdictions.

Mr. Speaker, because all of this money is hidden, and a lot is hidden from the US Revenue Department, the IRS, the U.S.A. has come out and said that they lose between \$70 billion to \$80 billion a year, because of these accounts which are hidden from the U.S.A.

In the past, Mr. Speaker, people turned a blind eye to all of this, but in this little global village that we live today, things have changed and we in Barbados have been told in no uncertain terms, to clean up our act or be termed unco-operative, be black-listed, or be sanctioned. And so a

few years ago, Barbados like other Caribbean countries, undertook to do whatever was possible to eradicate the scourge of money laundering from this region. Hence, Mr. Speaker, this legislation hence, these amendments.

We have, as I said, committed ourselves to be in the forefront of the fight against money laundering and with this legislation, the message we are sending is that Barbados will not allow its banking system to be used by international criminal elements.

I think Sir, that it is a very ambitious undertaking and I think, Sir, that despite its complexities, it is not beyond our capability.

3.40 p.m.

Sir, it is known that certain sums of money, when deposited, will make your eyes open wide. Therefore, the law insists that cheques be made by financial institutions if and when customers are depositing in excess of \$10 000. That is section 8 of the Act. Of course, money launderers know the law and, in some cases, even better than the lawmakers, so they will attempt to sanitize every deposit which they make in excess of \$10 000.

You have heard, Sir, from nearly all of the previous speakers that \$10 000 today is not really considered to be a big sum. To begin with, money launderers are not going to go into banks with \$10 000 or more in cash and simply deposit it but they will buy assets and will use third parties as well. For example, a money launderer will go to a chap that has a business and he will have, to make it as simple as possible, \$10 000 in cash and he will tell this chap that he will give him this \$10 000 if he gives him \$8 500 by cheques from his business. You see, he is sanitizing it there. What this means also is that the bank is not going to look behind a \$8 500 deposit but obviously if he goes back three, four or five times with that amount then I believe that will put you on your guard and you will have to do it.

The point I want to make is that those money launderers know the law so well that they will find ways and means to beat the law. Money laundering is now seen as an industry and the culprits go to the extreme to get around the law. Most of the money launderers are experts at their trade and this is what we have to realise. We have to realise also that a fellow who is really and truly laundering a lot of money will hardly choose a jurisdiction like Barbados because big cars do not fit comfortably in small garages.

Asides.

Hon. R. N. GREENIDGE: Mr. Speaker, a money launderer will choose a jurisdiction like Geneva, Switzerland, London or Miami where he can park a big sum alongside other big sums without really creating any ripple

at all. You see you will be more on your guard to a fellow like that if he comes down to Barbados with these massive sums, so he is going to put it somewhere else. This is not to say that we do not have money laundering here. All that I am saying is that those fellows know where to go.

Mr. Speaker, the other point I want to make is that this anti-money laundering legislation must be seen as a vehicle to protect our country. The law makes it quite clear that not only the money launderer will be guilty if caught, but any person who is party to his activity will be liable as well. This morning you heard the Honourable Attorney General refer to a case which is being dealt with right here in Barbados where not only the money launderer but the paramour...

Asides.

Hon. R. N. GREENIDGE: Mr. Speaker, very negligent bank officials have to be extremely careful as well. The objective is to prevent the country from getting an unsavoury reputation. So, Mr. Speaker, you will find that in section 20 of the Act the penalties are very draconian to say the least because they must act as a deterrent. Barbados simply has to take this approach about having very stiff penalties since in today's world it is not just the particular bank that is going to get the bad name but it is the country as well. This is the backlash. The bank will be termed a disreputable institution and Barbados itself as a financial centre will be termed a disreputable institution as well.

So the bank and all of its officers must realise that if they aid and abet money laundering that it can affect this country's reputation. So banking institutions have a very important role to play, and the officers of these institutions must ensure that these large sums of money they are dealing with are not tainted. If it can be demonstrated that they have not carried out a certain level of care then they are as liable and as culpable as the money launderer himself.

So you get a situation where a man goes into a bank, gives his name as John Smith, and his occupation as a carpenter, but he is depositing \$30 000 on to an account he already has that is a million dollars strong. If you ask by the card and so on how he got it and he says he won it in a lottery, as an example was given this morning, that cannot be the end of the matter. You still have a duty to ascertain whether he won it in the lottery. So he has to give the name of the lottery, the date it was won and so on because you have a duty to exercise due diligence and to make sure that...

Aside.

Hon. R. N. GREENIDGE: Of course, a carpenter depositing \$30 000 in a big million dollar account will

certainly put him under suspicion. So obviously if you do not do your homework you, as a bank official would be as culpable as that man.

Asides.

Hon. R. N. GREENIDGE: Mr. Speaker, as a bank official you have to suspect that every man's money now is bad when you are dealing with those sums and you must carry out due diligence. It is a pity that we have come to this stage in this world that you must be suspecting that every deposit somebody makes in excess of \$10 000 is bad, but it is better for the bank's officials to use that approach than to assume that a deposit is good every time a person makes a deposit, because once you use the approach that this is good money, another \$50 000 and so on, which is coming here again, you will tend to fall into almost a slumber and you can be too casual with it and not do the investigations properly.

You have to remember too that in section 10 of this Act the bank is responsible for ensuring that its employees are fully aware of the laws relating to money laundering. That is a every serious point.
3.50 p.m.

Mr. Speaker, if after you have carried out all of your checks and you still have a gut feeling that the money is tainted, then you still have a duty, even if you did not come up with much but this feeling is there, to report this matter to the Money Laundering Authority in accordance with the provisions of the Act.

Ninety-nine per cent of these big money-laundering customers, the banks never see in person. A big cheque or a big draft may come from Miami to a bank in the Caribbean to be deposited to John Brown, but John Brown never comes. The banks should investigate every time this happens. When these drafts come in, the banks should investigate.

Mr. Speaker, it is no secret, and I want to make this point strongly, that in some parts of the Caribbean, banks have been known to take these cheques because they want to build up their deposit base. Every financial institution is not necessarily what we would call an above-board institution and there are some of them that will take these deposits because they want to build up their deposit base. Some very shady banking institutions are only concerned with attracting stashes of money. Human nature being what it is, there are unscrupulous people in the banking system too.

I have to say, Sir, that Barbados has the reputation for being very serious where its approach to money laundering is concerned. It was widely felt in international circles that some Caribbean countries were going through the motion of passing this legislation and things would continue as usual. As you know, Mr. Speaker, legislation is only as effective

as are the institutions which are supposed to police and to support the legislation.

We are being called upon not just to put the law on the Statute Book but for the law to have effective and meaningful administrative and managerial support. I think this is crucial, not just to have the law there but to have a peg on which the law can literally hang its hat. The cost of investigating and prosecuting can be as expensive as the very sum of money you are pursuing. Costs of investigations in money laundering matters can be very expensive. Many Caribbean countries may not on their own have the human resources to complete a lot of these investigations. The money launderers invariably have money and can get the best lawyers in town. If you want me to put it as bluntly as possible, it is that we have to be able to win the cases. Otherwise, it is no use having this law. They are always going to have the best lawyers and it is going to be so expensive for us to pursue and we may simply throw our hands in the air and give up.

Section 14 of the Act makes it clear that in order for the Court to order seizure of assets of the money launderers there must be first a conviction. You have to weigh the case but even more important is the fact that it must be proved that the funds which you are seizing were indeed connected to or derived from money laundering. This is where a lot of the expense comes. If you are going to seize the assets, first of all you have to get the conviction and, on top of that, prove that this sum of money you are going after was related to the whole question of money laundering.

I will close, Mr. Speaker, by saying that we appreciate the fact that this is going to be an uphill task for us. We know that it will not be easy. We know the kind of group we are dealing with, but Barbados will endeavour to save its very good name. I am obliged to you, Mr. Speaker.

Mr. D. St. E. KELLMAN: Mr. Speaker, I rise to speak on these two Bills and to say from the outset that these are rather serious Bills before this Chamber but we, as a country, have to recognise that in order for us to implement and protect our sovereignty, this is going to cost us some money.

I have observed that within the last few years small parliaments have been asked to protect the interest of large parliaments by a lot of new legislation that has been enforced within these parliaments and there is also the cost of policing these various pieces of legislation. When one looks at the United Nations Human Development Report one can well understand why that Report has stated that everything that is going on within the world under the name of globalisation and trade liberalisation is protecting the interests of the larger states.

We have to recognise that the implementation of these Bills and the protection of our integrity is going to be a cost to our Police, the Customs, the Immigration Department, the

Defence Force and other Government departments. We, in the Caribbean, with limited resources, have been called on and dictated to by other States to make sure we prevent their bad guys from shifting money within our territories. I have no problem with that, Sir, but, as a politician, I also have to look at the opportunity cost of doing all of this.

We have to recognise, Sir, that with all the pretty talk we are hearing, a lot of this is not in our interest. We are actually doing the job for people elsewhere when they should have been doing the job and keeping the dirty money at home. Most of the money laundering money is created elsewhere and comes here and they cannot use their resources to...

Aside.

Mr. D. St. E. KELLMAN: ...So I am told by earlier Speakers.

They are asking us to use our limited resources to protect their money. Somebody, somewhere, must be able to tell them that we have to get some of the money too to help police this. What we are doing is their job. What is amazing is that we have moved to a concept in our tourism that allows people to leave a lot of money outside of Barbados and other small countries, and we do not hear one word about the amount of money left by tourism elsewhere.

I have spoken on this particular topic, Sir, in the Bahamas and have some comrades here who can bear me out on this. I have said that small States need to understand that the same way the OECD and other nations can apply sanctions to us, that we also need to have a trade-off. If we are going to protect their financial services then they have to protect our tourism dollars and make sure that they return to our shores.

When I said it a couple years ago, people did not understand the relationship and I hope now that they can better understand that we have been used by the OECD to protect their money, but they feel that they have a right to hold on to our money which sometimes sits in banking houses all over the world, especially in G8 countries, and we have no protection. That is why I made the point in the Bahamas that if the OECD wanted us to protect their funds, that we should have used all-inclusive tourism as it now stands, the concept of it, as a trade-off.
4.00 p.m.

Sir, we should have negotiated using our tourism product against their financial services to make sure we got what belonged to us.

Sir, I have said in this Parliament before that the same way the sugar industry is required to bring every single cent

back to this country, that the capacity at the Central Bank of Barbados is capable of doing likewise in tourism.

Sir, it is time we recognise that this is a small country and we have to maximise our capacity. If we are going to help people, those people must make sure that the necessary resources come back to this island.

We have to also recognise that our immigration policy might be working against us because we allow everybody to come and live, and if our immigration policy is not checked it will work against us.

Sir, drugs are foreign to Barbados and it was not brought here by a Barbadian. It was brought here by people who wanted to treat us like how they treat people in Trinidad and Guyana, and they used that concept to corrupt the minds of our young people.

Sir, it goes further. We are now told that we have an amendment to our Constitution that allows our young women to marry men from outside. Everybody is criticizing our young men, but nobody is seeing the social fallout. Our young women are going to the University, building big houses, and are now allowed to bring foreign men to live in these houses while our young men are in the mental institution or in the prison.

Asides.

Mr. D. St. E. KELLMAN: Sir, it takes a debate like this, after I have made this point many times before, to show the light of what is going on in this country.

Sir, if you go back to the United Nations Human Development Report on gambling, you will see the best way to launder money is through gambling. So we now have tourism, gambling and the immigration policy. How can our young people thrive in a country like this when we as politicians have turned a blind eye and have not heeded the advice given for the last three years and now our young people are under serious pressure?

Sir, I have spoken about the eight-year old young man who, when asked by his school teacher what he would like to be when he became a man, said that he would like to play football for Brazil or be a politician. He also gave another answer that worried me. He said he would like to drive around in a limousine all day on the West Coast in Barbados with his foot up on the dash board.

Sir, the lifestyle we have allowed in this country is not doing the country well, because there is an impression that work does not pay anymore, and that the harder you work, the poorer you get, and the least work you do the richer you get. I am saying that as politicians we have to change that

because the particular lifestyle we are allowing to be adopted in this country is not a good example for our young people.

Sir, when we are dealing with money laundering, we have to be careful because people can come here, buy a race horse, a boat, live in a fancy house and we do not know where the money comes from. Also, because of the globalisation, people can have assets without coming to Barbados.

Sir, we have to be careful because there are many old people walking around Barbados with \$60 000 in their hat who worked hard for it and have not robbed anybody. They simply believe the banking system is not right.

Asides.

Mr. D. St. E. KELLMAN: Yes, it is \$60 000 and when you see them they look like poor people. When they 'pass away' and somebody picks up that hat and takes it to the bank, they are surprised that it has \$60 000 in it. Sir, how many bankers would believe that an old person could have \$60 000 stored in their house? How can you tell the bank that someone died and left \$60 000 for you?

Sir, we are now asking our protective forces to change the way they do business, yet we continue to treat them the same way we did 300 years ago. Even their own comrades in the Civil Service do not respect their position, especially if they were pursuing a money launderer, got into an accident and had to go to the Accident and Emergency Department, they will have to wait four hours before they can be seen by a doctor.

Sir, we have to change the way we are thinking because this is serious business. We have to understand that we are not dealing with saints here. The people we are asking to do this job for us should be treated properly and given the necessary ammunition to do the job.

Sir, we also have to understand that we have carefully monitored things like shares. We have to understand that this is not a "pooh-pooh" game.

4.10 p.m.

Sir, I want to draw a scenario to you. I heard the Honourable Attorney General make a point this morning about lawyers. Apparently, it seems to me, that only money that is not tainted, is the money paid to the lawyers, and that is a very serious thing, because it comes under professional fees. In other words, if someone is laundering money, the amount taken out to be paid for services, that a portion of the money is not tainted, but the remainder might be.

Asides.

Mr. D. St. E. KELLMAN: Sir, we have to recognise that we are operating in a technological age and technology will be applied to work in their favour. People must understand that there are people who come to Barbados, buy properties at a high cost, demolish them and do not realise that their actions do not speak well for this country. It is creating the wrong impression.

Sir, when we are going to amend this legislation, it must be amended in such a way that we can protect ourselves and recognise that if the impression is given that you can gamble and claim money, then everybody in Barbados will be gambling. Sir, some of the gambling money might be tainted. Someone who operates such an establishment would not say that the person won it on a one-arm bandit. We have to be careful and protect ourselves. We have to look at every solution to solve this problem.

We must also be powerful enough to tell the United Nations that the same way they can pass Conventions which cost the Small States, they must all vote for some money to help defray the cost of implementing these policies. Sir, when you look at it, the beneficiaries to these Conventions are the G8 countries, and not the Small States.

It is not by accident that in the G8 countries you have the major banks. It is because the reserves of those banks are counted in the reserves of those countries. We have to understand that we need to go back and look at what was said when we were dealing with the OECD and let them know we can take-off too.

The problem with the Small States is, they believe that because they are small they cannot stand up for their rights. I am saying that at the last conference which I attended in Australia...

Asides.

Mr. D. St. E. KELLMAN: Sir, we ask that the members of the Small States come together. I believe we have to find a way to fight the G8 countries and let them know that we do not need them as much as they need us. We always give the impression that because we are small, we are not worthy. That is wrong.

I want to remind the Honourable Attorney General that an amendment to the Constitution is a very serious thing because it requires a two-thirds majority. The fact that it requires a two-thirds majority means that when that amendment is made, everyone must be happy that amendment is the right thing, and we have to be very careful that we do not trample the rights of our citizens to please other people whose interests are not the same as ours.

I thank you very much, Sir.

Hon. Miss B. A. MILLER: Mr. Speaker, Sir, I rise to give my support to the matter before the House. I think it is fair to say that money laundering is as old as the invention of money itself. Sir, from the day that money was invented, mankind has found ways and means to launder what is described as "dirty money". If we look down through the ages, it is not anything new in that sense. If you go to the New Testament, Jesus was cleaning out the Temple, as you will recall, and changes were prominent in that. Some of them were doing legitimate business, but you would have to know that some were into money laundering as well.

Asides.

Hon. Miss B. A. MILLER: There were all kinds of ways of laundering money through the ages.

Asides.

Hon. Miss B. A. MILLER: Slavery is another very interesting way in which money was laundered. Jurisdictions like ours have always, as little offshore entities, been attractive to people who want to launder money. In our time then, it became drug money.

I was watching something on CNN the other night, Sir, and they were saying that there are three currencies. There are legal tender, drug currency and coupon currency. It was an interesting programme pointing out the way in which the coupons you clip out of the Sunday newspapers to buy groceries, are used by terrorists in the United States of America to raise millions and billions of dollars.

In fact this investigator, who was a former NYPD operative was employed by the coupon redemption lobby to investigate them. It turns out that the authorities knew of these things, but less counted them simply because they were coupons. He said that it is as organised as the drug trade is and it raises nearly as much money as the drug trade does, and people are as intent by criminal and other means to protect it as they do with the drug trade. Sir, he made the point that a coupon is the third currency now. He was able to trace it directly to those who were involved in the first bombing of the World Trade Center.

Mr. Speaker, in our time, I can remember in this Honourable Chamber, in an earlier Administration, we took a very conscious and deliberate decision to go the way of services as a means of diversifying our economy and financial services was the path we chose. We have been careful from the very beginning to sell Barbados as a clean jurisdiction. We are very jealous of this jurisdiction. I heard the Honourable Leader of the Opposition, earlier today, talking about the fall-off in registration of a number of entities. There is some truth in that, not only in respect of

Barbados, but all jurisdictions, because of what is happening in the world economy among other things, now exasperated by the events of post September 11.

The reality is, Mr. Speaker, Sir, this was a path we chose and from the beginning, we have been very careful to keep it a clean jurisdiction.

4.20 p.m.

One hears about how many offshore entities that are registered, and at several different times, but one never hears of the ones to which we say "no". The reality is, we have said "no" in some years as often as we have said "yes". We try to be very selective but, of course, one can only be so selective and sometimes, as has happened in our jurisdiction when one or two unsavory entities happen to slip through our system, we just cut them off when the need comes.

I think it is fair to say that generally speaking, Barbados is known to have a clean jurisdiction. That is why when the OECD initiatives raised its ugly head a few years ago, we could have been in a position to take the stance we could and, in fact, as the Leader of the Opposition has pointed out, took a leadership role in fighting the unfairness of the developed countries who, to themselves, have arrogated the right to decide who is to have, or who is not to have, and what business must be onshore and offshore.

I would say this always that, in the end, it is about the fact that we have become so competitive in our financial offshore sector, that the OECD countries and, in particular the United States of America, are determined to drive this offshore business back onshore and thereby hangs the linkage to what is called "unfair or harmful tax competition".

It is the same thing with the narco-trafficking, Sir. We are expected to take the taxpayers hard-earned money to fight narco-trafficking by way of the transshipment business coming to our jurisdiction, but we do not always get the impression that in the developed countries, they are doing as much as they might be able to. Some of them do not appear as though they are doing anything at all about demand reduction. There are always two sides to it. They are speaking with forked tongue. How can one be legalising certain narcotics in certain jurisdictions and telling us to "do as we say, but not necessarily as we do"? We meet that everywhere, but the centres of money laundering, Mr. Speaker, Sir, are well known. It never starts in jurisdictions like ours.

The centres for money laundering are at the metropolitan heart of the OECD countries. Some of them are not pretending. They say straight up, there is a point beyond which they are not going to go but, as usual, they want to set a different standard for us than they, themselves, are willing to accede. Sir, I go back to this point, time and time again,

because it is always a sticking point with me and we meet it at every turn.

The CARICOM Heads met at an emergency session in Nassau, Bahamas, early in October, 2001. Of course, the officials having done their work, the Foreign Ministers had to meet a day earlier in order to approve the agenda for the test. In the midst of this meeting, we had received a message from the Treasury Department of the United States of America that they were aware we were meeting and would have liked to come to the Bahamas overnight to talk to us.

My first question was, what are you coming to talk to us about? It turned out to be money laundering. My second request was that they would not send two low-level persons to talk to us.

They, in fact, sent a General Counsel and an associate General Counsel, a gentleman called Mr. George Wolfe. They were very straightforward and told us that they really wanted to talk to us about the UN Resolution, No. 1373 to which the Attorney General has made reference earlier on and to an earlier Resolution No. 1333, which referred specifically to blocking assets of Mr. bin Laden. He made it very clear what they wanted the Anti-terrorism Coalition to do, was to tighten our legislation and to put in place whatever regulation, or new regulation, that we had to put in place which would allow us to freeze, at a moment's notice, funds, other assets or economic resources of persons who were known or suspected to be terrorists and to criminalize the funding of persons who one way or another, aided or abetted the carrying out of terrorist acts.

Sir, we are doing what we have to do in that respect, and what is before the House is all part and parcel of that. Sir, one of the first things which occurred to me after the shock of the events of 11th September, 2001, subsided was that, particularly in the area of money laundering and in other areas of the OECD initiatives, the developed countries who make up the OECD would immediately use the events of the 11th September, 2001, to try to claw back gains which we had managed to accrue through much effort and, in particular, much effort by Prime Minister Arthur, across the face of the world in the last 18 months or so. Sir, the reality is that it is happening.

If Honourable Members, as I do, have access to some of what is being debated in the United States Senate and could hear some of the language that is being used – I mean, the arrogance of it!

"US Counter-terrorism Strategies must identify these foreign jurisdictions...."

"Albeit in a manner of due process and force them to raise their standards..."

“The US must use access to its market as a club...”

We heard legislators in the United States in the first early days opining that Mr. bin Laden’s assets were probably to be found in the Cayman. The reality is Sir, that in the US Senate, Senator Carl Levin, Democrat from Michigan, was heard to say that Osama bin Laden was able to access US banks through corresponding accounts and subsequently indirectly through corresponding bank accounts, which in turn had US corresponding accounts, *et cetera*, and other ways and means as well, not in the least of which has to do with assets in coupon currency as I have indicated before. Afghanistan is part of what is known as the golden triangle in the world. Drugs flow out of there. Mr. Tony Blair, Prime Minister of the United Kingdom has complained about that all the time. This is an opportunity, among other things, to help to strangle that trade, because they too are not doing anything at home in their jurisdiction to strangle or to bring about demand reduction. There is a lot of hypocrisy and double standards in the world and small economies and countries like ours are often and sometimes unwittingly footballed on this so-called unlevelled playing field. We saw it with the Shipriders’ Agreement.

4.30 p.m.

I well remember, Sir, in April of this year, the 34 countries of this Hemisphere were represented at the highest level of Presidents and Prime Ministers, at the Third Summit of the Americas in Quebec City in Canada. I well remember in the months leading up to that and indeed the years, from one Summit to the other, an important matter that Prime Minister Arthur wanted to get on the agenda: Threats to Human Security, Non-Military and Non-Trade Threats to Human Security in this Hemisphere.

We were thinking there of HIV/AIDS and natural disasters. We were also thinking of terrorism, which was not unknown to us in Barbados. And a few countries, particularly Mexico, did everything to kill it off and it did get killed off the Agenda. That was only in April of this year. If Prime Minister Arthur’s request for that agenda item had been discussed for this hemisphere, at the high profile, including a new President, Mr. George Bush in April in Quebec City, Canada, it is entirely possible that even more matters, not only in our jurisdiction but in the North American jurisdiction to do with anti-terrorism, would have been further forward in process and would have been in a higher profile. I am not saying that the 11th September, 2001 may not have happened, because these people are like rain, sometimes it sets up and tells you it is coming. These people had already bombed the World Trade Center. They told you that they were coming, they did it, and they were not successful and it was clear that at some point, they would come back for that or some other monument or symbol.

Mr. Speaker, long before the 11th September and well in advance in a draft of legislation which we have seen in the

1990s, and even in the 1980s, Barbados had the right attitude and the right mind set, in respect of money laundering. There is really nothing that any country has to teach us about the establishment of a clean jurisdiction, and also in respect of offshore financial services. We have a very fledgling Ships’ Registry. I make reference of it from time to time on the Floor of this House.

Again, that is another area where we are very selective and that is partly why the Registry is still so small. There are other reasons as well, but because we are so selective and because – and this goes now, Sir, to the branding of Barbados – we want that wherever the name Barbados is uttered on the face of this earth, people associate it with a clean jurisdiction, people associate it with high quality and people associate it with the highest integrity, whatever the commodities in which we trade services that we export or whatever.

Sir, this legislation only comes in the course of a way in which Barbados does business. I would like to think that this is true, irrespective of who is presiding over the administration of Government in this country. It is true, Members on the Other Side now want to pretend that it was not they who criticised the financial services sector when it was first brought to this Chamber, but I was in here. Neither of the two Members on the Other Side, Sir, with respect, were here then, and they may leave here and leave me in here too. I am not prophesying but these things happen all the time.

Aside.

Hon. Miss B. A. MILLER: Many voices were critical of the legislation we brought here but they want to pretend now that it was only Richie Haynes, but Richie Haynes was with them at the time.

Mr. Speaker, the point to be made here is that anyone in their right senses could possibly object to the matter that is before the House. We must not make an assumption that ordinary Barbadians, the man in the street, does not understand what we are talking about. People do understand.

I grew up as a child in Barbados hearing people whispering about So and So is the receiver of stolen goods. You do not hear that phrase much nowadays. Maybe the practicing lawyers may give the lie to that, but I do not hear it much nowadays. People knew that was wrong and money laundering is not too much different from that in the most general terms. People know what is right and people know what is wrong but, as the point has been made here, it is not so much the ordinary Barbadian in the street who is doing the money laundering.

Money laundering, on the scale we are talking about here and money laundering which could be beneficial to

terrorists and other criminals in the business of criminal undertaking, all of that comes from offshore here. The Honourable Member for St. Lucy was correct and I told him he was making a good point and he should elaborate it, but he went off the rails immediately.

Aside.

Hon. Miss B. A. MILLER: He must curb the tendency to do that, but he made a detour into the Judge Gap and that was the end of the point.

Aside.

Hon. Miss B. A. MILLER: The point he was making was an excellent point. We did not go out advertising for people to launder their money in these territories in the Caribbean. Even before we had such a sector in Barbados, those entities in the capitals of the OECD, saw ways in which they could do their money laundering in territories such as ours. They now, in their self-righteousness will want to say to us that we must clean up our act. Wherever our act needs cleaning up, we must do that. When I say we, I am talking about the entire Caribbean because you know, and again I go back to the branding of Barbados, generally speaking outside of this region, people see the Caribbean as the Caribbean. They do not distinguish one from the other and, in our branding of Barbados, that is an important consideration.

Aside.

Hon. Miss B. A. MILLER: We want a brand of Barbados in the world that no matter what it is, if it is guava jelly or Sandy Lane Hotel, it must be the best quality. Whatever service it is they are selling, it must be associated with the best quality and the highest integrity attached to the way in which we do business and that is a label we must have, and it is partly out there. Sir, if you name a Barbadian cricketer anywhere in the world, people immediately think, "highest quality". I have been to the farthest part of the world and when I called Gary Sobers' name, somebody always responded in a positive way.

Aside.

Hon. Miss B. A. MILLER: Mr. Speaker, I am saying that we are well established in this matter of anti-money laundering devices of one kind or another. We are constantly upgrading our legislation and our regulations so that Barbados is viewed as a place where anybody could come to do clean and legal business, and we were like this before the OECD countries. I would not feel today, that I would have to exhort Honourable Members to give their support to this legislation.

4.40 p.m.

I want to support the Honourable Attorney General in her proposal that there absolutely must be a programme of public education on these issues. Barbadians are highly educated, intelligent and alert to world affairs. If you listen to ordinary Barbadians talking, you can understand that the man in the street can have a world view in a place like Barbados.

I heard Andrew Young two weeks ago making that point. He was staying at a hotel in Barbados where he spoke to the lady at the front desk and he was amazed at her delivery and grasp of world affairs. He said he asked her what is her training and she told him that she did that in her first degree and he nearly fainted. He said he told the audience, this was an audience outside of Barbados, that everybody in Barbados has this high level of education, this grasp and this engagement of foreign affairs. Even a front desk operative or a red cap at the Airport can have a world view and not many people can have that.

Mr. SPEAKER: The Honourable Member has two minutes.

Hon. Miss B. A. MILLER: So this legislation is not anything we are doing because any whip is to our back. There are deadlines, of course, but this is how business is run and how governments operate. Sure, there are deadlines in respect of some of these things, but this is only another piece of legislation in the business of continually and consistently keeping Barbados' reputation and we do have a reputation, Sir.

When I went to Mauritius, somebody said to me, in respect of the offshore financial services, that they are using the Barbados model. Well, Mr. Speaker, Sir, I do not think I have had a prouder moment. So this is something which is part of a process in which we will continue to be engaged because you have to be constantly vigilant in these matters, and some other Honourable Members made the point, because those who want to engage in criminal activity which involves the laundering of money will find every loophole to do so.

Money launderers are well-heeled and are legally and otherwise advised by their accountants and bankers in fine offices in the Metropolitan capitals as we as Governments are advised. So I am very pleased that this has come before the House in good time, and that there would be an understanding for all those who are willing to hear and understand where Barbados stands in these matters.

I am glad that this is an occasion where both Sides of the House can close ranks and put Barbados first.

I thank you, Sir.

Rev. J. J. S. ATHERLEY: I certainly would like to make my input insofar as the discussions on these amendments are concerned. With the exception of the Honourable Member for St. Lucy, all other Honourable Members who spoke come from a legal background. Of course, I cannot speak with the "criminal authority" with which they spoke.

Asides.

Rev. J. J. S. ATHERLEY: I used that term as one would use the term "criminal lawyer" so I am not imputing anything negative to the noble profession of lawyering in Barbados.

I agree with the Honourable Member for St. John that this legislation will probably be judged by how it tends to operate when its full impact is realised in the Barbadian society. Time, therefore, would attest as to the prudence of the original legislation and of the amendments which we are now discussing.

I believe it would be to look at this matter in a fairly narrow light if one sees it merely as a response to the expediency brought upon us by our participation in external agreements. I think, it goes far beyond simply a matter of feeling ourselves bound to take certain steps because we are party to certain international and hemispheric agreements.

I think also that we will fail to realise the importance of this issue if we see the business of money laundering as being a problem only for the industrialized States and countries in this world. Certainly, if one considered the magnitude of the activity of money laundering, it really cannot escape a serious search for understanding because it will impact significantly on small developing States, especially States positioned such as Barbados is, if we do not put in place certain legislative, as well as other framework, to counter the potential spread of such illegal activity within our economy.

The Honourable Member for St. Joseph made reference to the fact that we are talking about a multiple hundred billion dollar annual activity. I believe that type of figure only relates to money laundering, which is related to illegal drug activity, which runs into hundreds of billions of dollars annually.

Clearly, this will pose a problem for Barbados because Barbados, as well as the rest of the eastern Caribbean, is located on that route wherein the dynamics of supply and demand for drugs operate and arms and money are usually present, as we have come to realise. Of course, that money needs to have a proper cover in order to find legitimacy.

As such, therefore, since we are so positioned geographically within that drug route where the demand and supply dynamics operate, we are bound to be seen as a target centre for cover for that money and for the processes which bring legitimacy to that money changing, not only its colour, but indeed, its odour and I think as such we must be very concerned about this.

The Honourable Attorney General, in presenting the first submission today in this Chamber, made reference to the impact of technology. Certainly, if our geography constitutes a problem for us, that problem will be compounded when one puts on top of that the feature of today's technology which gives swift mobility to that money as it seeks for cover and to change its face.

So we are, in fact, in a fairly precarious situation. I think these factors, geography, compounded by the presence of technology in the context where drugs are moving around, put us in a position where we have to be very careful. So we must put mechanisms in place that will stem the flow, not only of drugs and arms, but of illegal money which is seeking to wash itself.

4.50 p.m.

It is unfortunate that a country such as Barbados, having attained the level of development that we have, finds itself a potential target centre because of the achievements we have made, and for which we are known regionally and internationally. Barbados, and I say this not from a boastful perspective, it is the truth. The reality and the experience of the past and current happenings attest to the fact that Barbados is the most politically stable of the Caribbean countries. I hope we would not have cause to debate that, but that is certainly my position if nobody else's.

That political stability itself is one of the things which tends to attract this type of activity. People want to put money in a place where it would be safe, where it is unthreatened by the environment in which it is lodged. Government will not wake up tomorrow and put its hands on my money, so I can lodge it safely in that location. Traditionally, we have had strong precepts and principles in terms of banking with respect to secrecy and confidentiality and again, this is the kind of cover which this type of money is likely to seek.

The development of our telecommunications infrastructure, indeed, in the current environment where we have moved to bring the process of liberalization to bear on that, and even apart from that, we have got a fairly universal availability in Barbados of modern telecommunications infrastructure. This is the type of environment this type of money needs and seeks. Of course, we are known to have established a good platform, irrespective of the utterances from the Other Side, for the development of offshore

business. In spite of a few setbacks along the way, we have a good platform for the development of offshore business and financial services in this country and, perhaps, we will hear more about that from one of the Speakers to follow.

Another reason why this is important, and I see with this an enormous potential for corruption at the level of the public official. Public officials operate at all levels in Barbados. Where money is dirty and present in abundance, there is the potential for corruption. What does that speak to insofar as we are concerned as a nation, whether we think in terms of our heritage of democracy, I think that that is threatened where there is the potential for corruption at the level of the public official wherever he or she is located in the public service system. It is a threat to our systems of government and to our heritage of democracy.

These are very important reasons why we have to make sure that we have in place the kind of legislative framework which responds with vibrancy to the threats posed by this illegal activity. We are operating now in a very liberalised, neo-liberal environment and there are some strong positives associated with that as debates in the past would have suggested, but there are also some obvious negatives associated with that. That new liberal context for us today throws up, in my view, additional opportunities for dirty money, not only to filter into the system but potentially to flood the system, unless there are proper mechanisms in place to counter that.

The mobility of international capital – I am talking about finance capital – which is facilitated and fuelled by technology and by competition for investment and facilitated, in my view, by the rapid growth of global capital, especially in the past decade or two, is part and parcel of the reality which the world faces today. Barbados is not immune from that because the capital is so mobile, so available and the technology makes movement so immediate. There is a present and immediate impact upon centres such as Barbados.

The creation of regional economic zones – I think the European situation is a classic case because some of the biggest centres for money laundering activity in this world are to be found in Europe. The CARICOM Single Market and Economy which we are talking so much about would provide an added situation wherein there is movement of people and movement of capital as well. Of course, in the wider hemispheric terms, the development of the Free Trade Area of the Americas and all of this is part of the new liberal context reality in which we live and these can only give added rise to the potential for money laundering activity to take root within the borders of our countries and our economies. Features of privatisation, divestment of State assets, private participation in partnership with Government in some of the critical entities through which we service our

people, are opportunities for illegal money to be deposited and find its way to a point of legitimacy through the system.

Barbados, therefore, must avoid the reputation that some other States in the Eastern and wider Caribbean have attracted. I think it has been acknowledged earlier that Barbados is recognised as a reasonably sound financial centre. Certainly, we are not known for facilitating the mobile, brief-case banks. We are not known for the operations that arise in the morning and go to bed in figurative terms at night. This kind of money draws a cloud over our banking sector. We are not known for that and we want to make sure that that continues to obtain. That type of illegal activity will impact upon your banking sector. The point about that is that it will discourage other legitimate investment.

Barbados is still very much dependent upon foreign investment. Of course, we moved to a healthier state of local investment and higher levels of our own productivity, but we are still very much dependent upon foreign investment. That has been our past and is very much part of our present and it will be very much a part of our future, I dare to say.

We would want to know that the atmosphere is such that legitimate investment is not for any reason discouraged so that we must ensure that our financial institutions are clear as to what their duty is. I think the legislation clearly spells out what their duty is, what they are accountable for, what they must report and how, the kind of systems they must put in place to be able to determine, with some degree of certainty, whether they are dealing with activities which are suspicious or clearly legitimate.

The Financial Intelligence Unit, which is very much a part of our anti-money laundering setup, must be given the kind of clout that enables it to investigate all types of financial crime, including money laundering in all of its guises. Clearly, we have to continue to provide for confiscation and we must do so in a more robust fashion. I think that is one of the more critical elements of the legislation which is before us. It is a matter around which perhaps some controversy revolves even if only in the realm of theory. There are those who are constitutional purists and there are those who subscribe significantly to the doctrines of liberal democracy wherein property rights are seen as sacred and may have at the theoretical level some problem with the provisions which are being made.
5.00 p.m.

Sir, where those problems exist, we must learn to resolve them.

I subscribe fully to the particular provision which deals with the matter of confiscation and the shifting of the burden of proof and evidence. We have to make sure that we embrace all the areas where a possible target exists for this

type of activity. We also talk about the traditional institutions of financing, but there are other areas like real estate, car dealership, jewelry dealership and the postal services.

The Caribbean Financial Action Task Force has a respected and loud voice but surely, in our region, the focus is on self-assessment and technical assistance for which we qualify. In fact, on the basis of how we show ourselves to be prepared to make adjustments to meet the threat, we qualify for technical assistance within that context.

The particular issue we are concerned with is the pending mutual evaluation exercise. Our legal defence continues to be the first line of defence. We must respond as vibrantly as we can in making sure that our legislative framework is efficient in terms of the legislation itself and the existing laws in relation to banking, insurance and the operation of financial cooperatives from time to time must be re-visited and be revised. I believe this is the context in which this legislation is being brought before us.

The Financial Intelligence Unit would be very much aware of the methodologies which are used regionally for the purpose of money laundering and will respond with vibrancy but it must be facilitated in terms of the framework in which they are made to exist. The framework must be as healthy as possible in which it is called to operate. This is what we are seeking to do. The Financial Intelligence Unit, though small, will have the clout that will enable these entities to make the necessary response.

I see this legislation as seeking to provide greater facility for that to be achieved and I want to give my fullest support to the amendments before us.

Thank you, Sir.

Hon R. R. FARLEY: Mr. Speaker, I rise to lend the perspective of an investment promoter to the international happenings which have brought us to this point. This legislation is necessary in light of the prevailing circumstances and I fully support the introduction of this legislation.

Sir, the point must be made that this matter between security and privacy is one which has been going on for a long time and with the events of September 11, the pendulum has swung in the direction of security.

Sir, regulation is at the bedrock of what is referred to as free market economies and the regulation speaks to everything from the nature of information available, the kinds of conditions under which business transactions are conducted and it provides somewhat of a level playing field for operations.

Sir, the point must be made that the leading free market economies in the world, the economies of the OECD, believe in liberalisation for everything except for capital markets. They believe that all markets around the world must be open to trade in goods and services where they have a competitive advance but, in the matter related to trade in financial services, they believe in having a close, very tightly regulated system. They have always believed that international financial sectors are nuisances which must be stamped out. They believe that whilst the world must unite in the fight against terrorism and money laundering, the opportunity is being taken by a number of countries to sneak in provisions under the guise of the fight against money laundering which are really in the nature of an assault against international financial offshore centres and are seeking to boost their own financial competitive advance.

Sir, the bottom line reality is that London, Manhattan, Delaware, all locations in OECD countries are the competitors of Barbados. Sir, Miami has not become the sprawling entity it is by way of investments generated within the United States. Miami has been built by investments coming from Latin America. If you want to make money in Florida, you just have to build some condominiums, set a high price on them and you will see money from Latin America flowing in that direction. When the money goes in the other direction, that is where all the alarm bells start to go off in the minds of regulators in the United States.

Sir, I want to make the point that there is a need for balance. The bottom line reality is that regulators generally must ensure that the public good is protected, that rules and fairness are observed and that offences under the law are prosecuted.
5.10 p.m.

Sir, the reality is that regulators must not take the position that business people, by definition, are crooks and that all business people are, by definition, into tax evasion. The position must not be taken that all business people who have investments in offshore centres are crooks and money launderers and made criminals of.

It is important that all of us unite to fight against international crime whether it is committed in Delaware, USA, or anywhere else in the world. We in Barbados will play our part, but we call on the United States of America, the United Kingdom and others to play their part. The United Kingdom was very reluctant, I am not sure if they have as yet, to respond to the request of the Government of Nigeria for assistance in tracking down monies which they believed former Government officials had spirited out of Nigeria and into accounts in London. Sir, can you imagine if it were the Government of Barbados that had denied a request for mutual legal assistance in tracking down the proceeds of crime? Sir, that would never arise.

Since the early 1990s we passed a Proceeds of Crime Act and we have for many years had mutual legal assistance agreements with various countries. Since 1984, we had an exchange of information agreement with the United States of America and we have cooperated in bringing several persons to justice.

I want to indicate that we in Barbados, particularly the regulators of business in Barbados, must not get caught up in the tide. They must not believe everything they hear. They must not unwittingly be convinced that to do good and to get to wherever the haven is for regulators, that they have to do everything they are told to do by the United States of America, the United Kingdom or anyone else. Every situation must rest on its own merit.

We have very good laws which establish the standards of legal proof, which establish what is criminal and what is not, and we have to be faithful and true to our legal system, as we know it, Sir. This legislation is essential. Barbados will continue as it has for all the years to lead the fight against money laundering. Let us be very clear that we are involved in a situation in which the large countries of the world are judge and jury. Sir, not only that. They are also active promoters of the very business they claim they want to stamp out. They really have interest in it. There is major conflict of interest we have to be aware of.

Another issue is that there are bodies which were not previously known to international law that have suddenly become very powerful. They are now, given the situation that we are in, able to ride roughshod over the international community. Bodies which were nothing more than association subscribed to by a limited group of countries, have suddenly, in this environment, assumed weight which is disproportionate to their real status. The reality is that we are no longer in a position to ignore them in the way we have in the past. In the past they had no standard international law. They tried to wield their influence through public opinion.

Recently, legislation which has been passed, so far, by the United States' House of Representatives, and it is to be considered by the Senate, this legislation – the short title is "The U S Patriot Act, 2001". This is an acronym for a long title, Uniting and Strengthening America Act by providing appropriate tools to be set and obstruct terrorism. Sir, that legislation has, for example, incorporated into its provisions special powers to be set by the Treasury in addition to other factors, which I will discuss later, to use the fact that some of these international organisations, now known to international law, may have negatively listed countries as a reason for invoking special sanctions against these countries.

For example, a body, such as the Financial Action Task Force, does important work to raise international standards

against money laundering but, in effect, has no real standard in international law. The OECD published a negative listing of 19 countries earlier this year and is about to conduct a review to look at others. In the United Kingdom, Prime Minister Tony Blair and Gordon Brown, in the United States President Bush and Secretary O'Neal have all, not only challenged, but mandated the Financial Action Task Force to raise its standards.

At a recent meeting on October 29, the Financial Action Task Force in Washington, Secretary O'Neal indicated he wanted the World Bank and the IMF to adopt the 40 recommendations of the Financial Action Task Force as the new international standard for money laundering. They have moved, since September 11 in one fell ideological swoop from being a body which coordinates for its members to being the *de facto* world standard in these matters. We must ensure that while we cooperate fully with them, while we unite in what is a good fight, that we do not become part of the collateral damage, which any student of war will tell you, is always a consequence of action. Barbados must ensure that we are not part of the collateral damage which will result from this assault on the world financial system.

Sir, I specifically want to draw the House's attention to how this matter is unfolding as far as the United States of America is concerned. Under this legislation, which I believe is No. 3162 in the House of Representatives of the United States, they are now making provisions, provisions which we in Barbados had fought against when they were presented by the OECD, have now worked themselves under the cover of radar into otherwise good anti-money laundering legislation in the United States.

For example, this legislation empowers the Secretary of the Treasury to do a number of things. He can, as far as offshore jurisdictions are concerned, mandate banks and other institutions in the United States to have to undergo the most rigorous reporting procedures. Sir, there is nothing wrong with reporting, but the reality is the volume of financial transactions. If you had to take a small bank in Bridgetown and say to it to report in detail on each transaction, you will close down that bank because you will be spending all of your time in filling out forms rather than doing business. Previously, the standard was on an individual suspicious transaction.

Sir, where you are indicating that transactions with a given country must now be reported on in a detailed manner, the net result and the fallout will be that banks in the United States of America, for dual purposes, will obviously have to take stock of whether it is worth their while to continue to have corresponding banking relations with banks in some offshore jurisdictions if, by so doing, it will bring down the wrath of the Treasury.

What are some of these triggers? In the legislation, it says that in making a finding as to whether reasonable grounds should exist for putting these heightened reporting requirements, as well as suspension of relations, it could simply be a matter where the jurisdiction offers banks secrecy or special regulatory advantages to non-residences or domiciles of the jurisdiction. We do not have bank secrecy in Barbados. What do they mean by offering special regulatory advantages to non-residences? Non-resident depositors in the United States of America get lower interest rates and other special features as compared with residents, and that is well documented.

Sir, here is where it gets tricky. Where they say that the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy in the jurisdiction in most small countries where there are offshore sectors, the offshore sector is segmented from the domestic sector of the economy, and in terms of the numbers on the books, the transactions are large. One hears of some Can. \$15 trillion being invested in Barbados, but those would be in the assets of insurance companies and the like.
5.20 p.m.

One of the criteria which the OECD had used to identify tax havens was this matter of high levels of transactions relative to GDP. Basically, they are saying that, notwithstanding, the fact that there are highly skilled lawyers, accountants, insurance brokers and others to service this industry, if by sheer virtue of small size, the offshore sector outgrows your GDP, then you can be listed as a country for special treatment under this legislation.

It also indicated that one of the figures would be to the extent that a jurisdiction is characterized by the offshore banking or secrecy haven, by credible international organisations or multilateral expert groups. This, translated into simple English, Sir, means that if the OECD says that you are a tax haven, then this legislation empowers or almost mandates the Treasury of the United States to invoke the wrath of this legislation on you. If the Financial Action Task Force negligibly lists you, or whatever other group that may come up and which they determine is a credible international organisation, or a multilateral expert group, the legislation is on to you. That is the practical reality with which we have to deal as we seek to promote international business in Barbados. We have a good, credible system but, unfortunately, Sir, when the authorities in other countries are attempting to categorize us, they do not necessarily do so by way of investigation.

Sir, one of the officials of the OECD admitted at a meeting we had some time ago, that their preliminary list of countries which they had identified for more careful scrutiny in the earlier days, was drawn from reading magazines, including in-flight magazines from airlines. Therefore, if a

country advertised and offered certain services, or if some writer somewhere mentioned that these were tax havens, that qualifies in putting that country on a list for further investigation. Therefore, my concern in this matter is that, in the heightened interest in international financial sectors which have developed after the September 11 event, the good fight which has been fought, for many years, against money laundering in some quarters, appear to have been overtaken by persons who always felt that only a few countries in the world and, certainly no small developing country, should dominate the international financial business centre.

We, therefore, have to make sure that we walk the road of balance, that we promote the highest standard of financial regulation, that we are very strong, positive and determined in our fight against money laundering, but that we also ensure that we are not so extensively stringent relative to what other countries are doing, the same countries that are pushing the legislation, that we become uncompetitive and unattractive as far as investments are concerned.

The bottom line after that, Sir, would be that we will be putting legislation there for a business that would not exist. Therefore, that is my simple urging to this Parliament, Sir, as we continue to develop this international business sector, and as we seek to do what we have to do. For our part in the Ministry of Economic Development, re: the International Business Development Division, we will be seeking to make these developments known. In fact, Sir, we have been very successful. We have an international e-letter. We are using e-mail to send out to businesses, to governments, to regulators, all over the world, which tells what Barbados is doing. So that for example, in offshore, if you see red, which means an excellent indication for the industry, we will be ensuring that the world is aware of what we are doing by way of the fight against money laundering.

What we are doing as well, is to ensure that we remain competitive and relevant at this time, because one thing for sure is that there will be a flight towards quality in this market and that, after the dust settles, Barbados intends to be up there with whoever remains in the international business sector, and with the heightened standards we will raise our standard to remain in the business, but we will ensure that we are at the forefront.

Therefore, with those brief remarks in support of the legislation, I would also indicate we will ensure that the best standards also coincide with success in attracting business. I am pleased to support the legislation and to congratulate the Attorney General and her Chamber for the speed in bringing this legislation, because the other realization we face is that, in addition to the mandate of the individual countries, the Security Counsel Resolution No. 1373 also

puts a very tight time frame and where the United Nations previously was content with many grand statements at the level of the General Assembly in supporting this and that, they are now mandating real action.

I can also report that at a meeting of CARICOM Finance Ministers today, we were able to take account of a meeting of the Caribbean Associations of Regulators of International Business (CARIB) which met previously to ensure that the Caribbean region was able to put forward a coherent response to what is required, that other Caribbean countries will, within the time frame of the United Security Resolution, be moving to strengthen their regulatory framework against money laundering and terrorism, generally, so that Barbados will not stand alone in the Caribbean. The Caribbean, as a whole, will raise the regulatory tide and, therefore, there will be less likelihood of Barbadians experiencing collateral damage from any negative public relations impact concerning unfortunate listing and occurrences in other Caribbean regions.

I want to close on that note, and to urge this House to support that legislation which is essential, given the context of our times. I thank you, Mr. Speaker.

Mr. SPEAKER: The Honourable Attorney General.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, Sir, I rise to wrap up this debate and, first of all thank all Honourable Members in the House who have spoken and contributed to this Debate. Clearly, these are matters that are going to engage us for some time yet.

As I had indicated at the beginning, many of the issues which will flow from both the question of money laundering, finance in terrorist activities, Resolution No. 1373, the extent to which the State is seeking to go into matters that may appear as though they are acting as an encroachment into people's privacy; all of these are things which will engage discussion for quite some time simply because they are very few settled points. There is also a sense that everything is still playing itself out across the jurisdiction and indeed within jurisdictions.

I want to reinforce, Mr. Speaker, that this Bill has two major philosophical mechanisms. One that recognizes that money laundering is a problem domestically as well and that Barbadians need to be clear that murder is not the only crime, but that there are other crimes within our society which work a disservice to our society and, in fact, undermines the very moral fabric of our society.

Secondly, given the dismantling of barriers that have led to the movement in capital and the technological improvement that we have seen, there is an opportunity for countries such as ours to be used both as a conduit, or as a

final point of destination in terms of investment for activities that are being funded by monies that are the proceeds of crimes. In both instances, we have a responsibility to act. In both instances, Mr. Speaker, the basic offence remains the same, but the methodology by which we reach them may vary in terms of how we gather the intelligence, whose co-operation we use in gathering the intelligence, and the extent of the penalties of the Court.

5.30 p.m.

This is not legislation intended to act as a further incumbrance upon ordinary Barbadians going about law abiding activity, and while the Honourable Leader of the Opposition has indicated his support, he has also indicated that he is prepared to wait and see how the legislation is enforced. I can only say to him that the discussions I have had today, with both members of the Financial Intelligence Unit and Authority, and the Commissioner of Police, who sits as a board member of the Anti-Money Laundering Authority, suggest to me that the public mischief which is being dealt with here, are the two that I referred to earlier, in terms of the domestic and international problems.

Sir, since I spoke in this debate, I have received a report from the Financial Action Task Force meeting which I indicated was held in Washington, D.C. last week and they too, Sir, as was anticipated, have set a framework for action to begin, to ensure that a set of special recommendations on the financing of terrorism will be developed which would commit members:

1. To take immediate steps to ratify and implement the relative United National instruments.

And I referred to Resolution 1373 earlier.

2. That would seek to criminalize the financing of terrorism, terrorist acts and terrorist organisations.
3. To freeze and confiscate terrorists' assets.
4. To report suspicious transactions linked to terrorism.
5. To provide the widest possible range of assistance to other countries law enforcement and regulatory authorities for terrorists financing investigations.
6. To impose anti-money laundering requirements on alternative remittance systems.
7. To strengthen customer identification measures in international and domestic wire transfers.
8. To ensure that entities, in particular non-profit organisations cannot be misused to finance terrorism.

Mr. Speaker, I refer to that, because these are the kinds of things we are dealing with, almost on a daily basis, in respect of legislation. As you would have heard, the Honourable Member for Christ Church East and the Honourable Member for the City of Bridgetown referred to it, being sponsored in the United States Senate, which seeks to blur the distinction between money laundering and offshore tax havens.

You have the Financial Action Task Force which primarily deals with money laundering coming out now and developing a new framework of obligations and deadlines and threats of sanctions for matters pertaining to terrorism financially. The *Economist Magazine* of the 27th October, 2001, last week on page 68 had an article: "The financial front line" and the article ends off, Mr. Speaker, and I quote because this is really the extent to which we are facing a single battle, but with many different fronts.

Aside.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I am making it a document of the House. This is a concept that may be familiar to some Members on this Side, but it is a single battle. I think there is no divide on this issue in the House on this point, and I quote the last paragraph because it is worthy of note for the records of this Chamber:

"How much pressure offshore centres face in the coming months will depend upon how deep an intrusion into individuals' financial privacy policymakers are prepared to make an order to clamp down on the nefarious uses of financial institutions. Because of the role that offshore centres play in allowing companies and individuals to avoid, indeed evade, tax, they enjoy powerful backing. Most well-known banks have branches or subsidiaries in tax havens. They have also been, according to Mark Hampton, an author on tax havens, useful to western intelligence services setting up covert operations. Over time, though, increased scrutiny and regulatory tightening will further reduce the distinction between onshore and offshore, and erode demand for tax havens. One healthy outcome, you might argue, of the war on the financing of terrorism."

Mr. Speaker, if ever there was an admission of guilt as to the intention of the guilty – and let me start by saying, Barbados is not a tax haven and has never been, but the point is that they have a perception that jurisdictions within the Caribbean are tax havens. Sir, if ever there was an admission in supposedly reputable journals like "The Economist" magazine, read by millions of people across the world, particularly those engaged in the business of financial services, that there was a perception that our country should be driven out of the financial services business, then this is an admonition to it.

Last year and the year before, it was the OECD seeking to bring about a convergence between offshore and onshore on the basis that they were supporting the precept of non-discrimination. Mr. Speaker, when we pointed out to them that the same principles of non-discrimination were not being upheld by their own jurisdictions, by their own centres in London and New York, we had the American Secretary of the Treasury in a statement to the Senate Subcommittee on 18th July, 2001, backing off on non-discrimination and supporting only the precepts of exchange of information and transparency.

Now that we have 11th September 2001, and the Resolution 1373 of 28th September 2001, seeking to introduce broad-based and wide sweeping measures, it is now being used again as an excuse, not only by those Senators that the Honourable Member for Christ Church East referred to as sponsoring the legislation, blurring the distinction between money laundering and OECD initiatives, but now in "The Economist", a clear admission that a healthy outcome of the war on financing terrorism is the reduction of the distinction between onshore and offshore business, and indeed, eroding the demand for tax havens.

There is a clear and present danger to Caribbean economies, who have legitimately fought to rest part of their economic development on the plank of the international services sector. On all Sides of this House today, Mr. Speaker, we have heard Honourable Members speak to the issue that simply for being as good as we have become, jurisdictions like Barbados, without prejudice to the fact that there may generally be others, who need to strengthen their regulatory environment, but jurisdictions like Barbados who, from the inception of instituting a framework for offshore business, have indicated that it is our intention to maintain a reputation of integrity, are being penalised simply, Sir, because we have done reasonably well, such that it is the second strongest sector of the economy and such that we have, in some areas of offshore business, ranked among the top five domiciles in the world. One of the areas that the Minister of Economic Development has indicated in the National Emergency Package will be a growth area, out of the post 11th September situation, largely because of the impact on insurance and reinsurance.

5.40 p.m.

So understand what we are facing, Sir. It is a single battle but one conducted on all fronts. There is one clear and present danger which there must be, in my view, no division upon while we seek to do those things which are absolutely necessary for our own purposes.

I genuinely believe we have a problem that is affecting the fabric of this society in terms of allowing persons to engage in money laundering domestically which is fuelled by a desire for materialism while ignoring the very basic

values and decent and honest modes of operation to be able to engage in lifestyles beyond their capacity, so we need this legislation to fight that cancer in our society.

We are also cognisant that there is a clear risk as a small open economy whose two primary sectors depend on the movement of people and capital from other jurisdictions, there is an inherent vulnerability and, to that extent, there must be a framework for cooperation with other international jurisdictions to allow us to maintain the integrity of Barbados as a reputable jurisdiction and one that is consistent with the other reputation we have for strong parliamentary democracy and governance.

I believe this legislation gives us the framework for it. It strengthens the initial legislation of 1998, and we have now to ensure that the administrative strengthening, which is to be done, is put in place as a matter of urgency so that the public understands what is the real mischief we are trying to create. We are not trying to stop people from taking money out of Barbados legitimately, but we want to stop people who are using the proceeds of crime to support a lifestyle that cannot be supported by their income or other legitimate sources.

We are not trying to stop people from bringing money into Barbados either. It is simply a requirement to declare it, in the same way as when we go to other jurisdictions where we have to declare if we have or not. Those things are properly and effectively dealt with through the Exchange Control Authority Act. What is required here is simply a declaration and if people purport to do it without the requisite authority from the Exchange Control Authority that raises suspicion and that is all we are really saying.

I give the House the assurance that the public education programme will come. In fact, in the national emergency economic and financial package, the Honourable Minister for Economic Development has indicated that \$200 000 is going to institutional strengthening and \$50 000 to the public relations efforts in order for these measures to be effectively implemented.

I want, therefore, Sir, to thank all Honourable Members who have spoken. I am sensitive to the responsibility we have not to move aggressively on matters that would alter the balance between the question of fundamental rights and freedoms, and the interest of the State.

I am also sensitive to the fact that our Constitution was drafted at a time when the threats to society and the economy that we face today, were not threats that were being faced in 1966. Sir, I was born in 1965 and the Constitution, therefore, is about the same age as I am but in that 35 years much has happened.

In 1970, people will tell you that there was no such thing as a drug offence before the Magistrate's Court in town and, in 30 short years, it has now become the number one crime for which persons appear before the Magistrates' Courts.

Also there was no opportunity for the transfer of money across jurisdictions that we see now. Now we have it not only by way of banks but through electronic banking. Indeed, both the United States of America and the United Kingdom do not have appropriate regulatory authorities to govern the electronic banking system, and it is a major loophole in their provisions for money laundering.

I will go further. At a time in 1966, a concept of money laundering may have been restricted literally to the use of cash. There are so many ways now in which you can launder money across and within jurisdictions that really and truly we have, therefore, to exercise a greater degree of vigilance. So for people to suggest that a constitution is a static instrument or a static code reflecting the morals of a time gone whose values and circumstances have long died, and that should be the only guiding light, and that we should treat it as sacrosanct and never touch it, Sir, need to wake up and smell the coffee.

The reality is that while the basic precepts of liberty and life, certain presumptions, Sir, should always remain as sacred, there will always be ways in which we would have to adjust elements of it, just as we have done today for the avoidance of doubt so that persons understand that the nature of a money laundering offence means that the proceeds of crime is the essence of the offence.

Therefore, we have included this section to ensure that we are not, in seeking to shift the burden of proof, encroaching upon even the exception involved and referred to as section 18 subsection 2. I believe this is a sign of a responsible Government, and a responsible Parliament. We are cognisant that there may be some incursion, depending on the judicial interpretation upon it. In those circumstances we have explained what it is.

We believe the amendment which is being sought, is not one to alter the balance of power in a fundamental way because, at the end of the day, the commonsense which is applied by ordinary Barbadians is, if a man's own property he is the best person to tell you how he funded the acquisition of that property. Nobody else can tell you better than he or she.

We are doing these things, therefore, for domestic reasons but also for international reasons. We have clear evidence, as I said, of the nature of the threat we face and it is going to require the continued commitment of all right-thinking Barbadians and Government, the financial services

sector and the general society because there is going to be much more of this. This is the kind of thing that would alter human security and indeed the integrity of our reputation and our society as we move more into the 21st Century.

I can only ask all Honourable Members to support it and give their full weight behind it. I want to thank those who have taken the time out to speak today. I want to suggest that the time is still very fluid, and that we need to be on our guard as we face these issues, both internationally and domestically.

I thank you.

Mr. Speaker, Sir, I beg to move that this Bill be read a second time.

Hon. R. N. GREENIDGE: I beg to second that, Sir. 5.50 p.m.

On the motion of Hon. Miss M. A. MOTTLEY, seconded by Hon. R. N. GREENIDGE, the House resolved itself into Committee of Supply, Mr. D. CARTER in the Chair.

COMMITTEE OF SUPPLY

Mr. CHAIRMAN: The House is in Committee of Supply.

Clauses 1 to 9 inclusive were called and passed.

The Schedule was called and passed.

On the motion of Hon. Miss M. A. MOTTLEY, seconded by Hon. R. N. GREENIDGE, Mr. CHAIRMAN reported to His Honour the SPEAKER, the passing of one Bill in Committee and Mr. SPEAKER resumed the Chair and reported accordingly.

On the separate motions of Hon. Miss M. A. MOTTLEY, seconded by Hon. R. N. GREENIDGE, the Bill was read a third time.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, I believe I should indicate that this Act do now pass in accordance with the Constitution and be cited as the Money Laundering (Prevention and Control) Act, 2001 and in those circumstances, a specific vote needs to be taken to ensure a two-thirds majority for passage.

Mr. SPEAKER: The vote will now be taken.

Ayes: Hon. Miss B. A. MILLER, Hon. Miss M. A. MOTTLEY, Mr. D. CARTER, Hon. R. N. GREENIDGE, Hon. R. C. EASTMOND, Hon. G. A. CLARKE, Hon. R. D. MARSHALL, Hon. R. R. FARLEY, Hon. N. A. LYNCH,

Hon. R. St. C. TOPPIN, Hon. Miss C. Y. FORDE, Hon. Sir HAROLD St. JOHN, Mr. M. Z. WILLIAMS, His Honour J. M. EDGHILL, Rev. J. J. S. ATHERLEY, Hon. Sir HENRY FORDE, Mr. D. T. GILL, Mr. G. W. PAYNE, Hon. H. F. LASHLEY, Mr. T. A. PRESCOD, Hon. Miss H. E. THOMPSON, Mr. L. R. TULL, Hon. Dr. R. L. CHELTENHAM, Mr. D. J. H. THOMPSON, Mr. D. St. E. KELLMAN.

Mr. SPEAKER: Twenty-five Honourable Members voted Aye. No members voted No. This Bill is therefore passed and so cited.

ORDER NO. 14 – SECOND READING OF THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS (AMENDMENT) BILL, 2001

Hon. Miss M. A. MOTTLEY: Mr. Speaker, when I rose earlier today to deal with the amendment to the Money Laundering (Prevention and Control) Act, I indicated that we had another Bill before us which, in large measure, I would in the Second Reading speech refer to that amendment. In the circumstances, Sir, I would only say at this stage that this amendment to the Mutual Assistance in Criminal Matters Act seeks to allow Barbados to share information in respect of mutual assistance in criminal matters with countries, provided they are party to the Vienna Convention, which is more popularly known as the United Nations Convention Against Illicit Traffic in Narcotics, Drugs and Psychotropic Substances, 1998.

There is a requirement of reciprocity so that we could not be just sharing information with somebody simply because they are a signatory, but they must have a provision in place to allow them to share information with Barbados. Equally, Sir, unless the Minister otherwise directs, all expenses incurred in respect of any request made under this sub-section must be borne by the country which is making the request so that we are not left out of pocket with respect to the enforcement of law in another jurisdiction where we simply happen to have the information.

This legislation would previously have applied to Commonwealth countries and to those countries with whom we would have had bilateral treaty arrangements such as the United States of America. This, therefore, broadens the scope considerably to those countries that may appropriately seek to enter a reciprocal arrangement with Barbados for mutual assistance in criminal matters.

With those few words, Sir, I beg to move that this Bill be read a second time.

Hon. R. N. GREENIDGE: I beg to second it.

Hon. Sir HENRY FORDE: Mr. Speaker, I just wish to make a brief comment on this Bill. I am in favour of any

effort to assist with the prosecution of criminals across the globe, particularly those who are involved in international crime. I think, however, that one would wish that some of the developed countries, like the United States and others, do not merely use words to support action, but show by their deeds that they are serious.

In this regard, I would use the opportunity to call on all countries to support the International Criminal Court and to become parties to the Convention. I know the United States of America has reservations because it obviously fears that at some time some of its soldiers may have to be prosecuted just as the soldiers and leaders of other countries may be before international tribunals.

It seems to me that if we are to improve international jurisdiction and set international standards and eliminate international crime, including terrorism, that one has to put in place a proper international legal order to deal with the consequences from international criminal activity.
6.00 p.m.

One of the hallmarks of an international legal order, in the criminal sense, is an international criminal court that earns its respect by the way in which it administered international criminal justice.

I would strongly urge the OECD countries, who only talk about these things when it suits their personal interest, to take a broader view on the matter so that we can have the international criminal court functioning as quickly as possible.

The other comment I would like to make at this stage relates to the matter in which the United States in particular and Canada to a lesser extent, countries of the G7 and the OECD, go about repatriating persons who have lived within their jurisdictions for almost all their lives, to other countries merely because they have fallen foul of the law. From time immemorial we have established international co-operation in the field of extradition.

Within the Commonwealth itself, we had a Fugitive Offenders Act which widened beyond that as our jurisprudence developed. We still have extradition treaties with some countries, including the United States, but I regret that the manner in which Caribbean people are being deported out of North America is against all human rights. I regret very much that a country like Canada would have breached the airspace of Guyana by flying its aircraft into Guyana in order to deposit seven Guyanese at Temerhi Airport who they said had committed offences in Canada.

Sir, the United States is no better, and I find it sometimes very difficult to support their concept of globalisation, which means freedom of goods, but not

freedom of capital nor freedom of labour. Hence, when we get assaults in the jurisdictions where we are becoming financial markets or assaults on our people, our brothers and sisters, it hurts people like me who all my life has been dedicated to a global concept of the world, particularly a regional concept of Caribbean unity as a concept that has fairness and equity built into it. Those in my generation, and the generation before me, people like Sir Shirdath Ramphael and others who see the world in terms of fairness, and not in terms of the pressures from these big countries who believe that only their people have commonsense, brains and understanding.

I will support this because I feel Barbados is exceptional in the way we have conducted ourselves both prior to and post independence, remarkably so since post independence, and we have set an international standard from which we must not depart. Part of that international standard requires that we always speak very firmly to international organisations, to countries with whom we trade and do business and with whom we are friendly but whose behaviour we cannot sometimes understand because of their inconsistent action.

Sir, with those words I support the Bill but again plead with the bigger countries, big in terms of numbers, people and GDP to show greater fairness in international relations.

Hon. Miss M. A. MOTTLEY: I beg to move that the Bill be now read a second time.

Hon. Miss B. A. MILLER: I beg to second that.

The question was put and resolved in the affirmative without division.

On the motion of Hon. Miss M. A. MOTTLEY, the House resolved itself into Committee, Mr. D. CARTER in the Chair.

COMMITTEE

Mr. CHAIRMAN: The House is now in Committee.

Clauses 1 and 2 were called and passed.

On the motion of Hon. Miss M. A. MOTTLEY, seconded by Hon. Miss B. A. MILLER, Mr. CHAIRMAN reported to His Honour, the SPEAKER, the passing of one Bill in Committee and Mr. SPEAKER resumed the Chair and reported accordingly.

*On the separate motions of Hon. Miss M. A. MOTTLEY, seconded by Hon. Miss B. A. MILLER, the Bill was read a third time and passed and cited as the Mutual Assistance in Criminal Matters (Amendment) Act, 2001.
6.10 p.m.*

Mr. SPEAKER: We will now recommit to Government Notices.

The question was put and resolved in the affirmative without division.

RECOMMIT TO GOVERNMENT NOTICES

Hon. Miss M. A. MOTTLEY: Mr. Speaker, Sir, I beg to give notice of the Bankruptcy and Insolvency Bill, 2001, dated on the cover November 1, 2001.

I beg to move that the Bankruptcy and Insolvency Bill, 2001, be read a first time.

Hon. R. C. EASTMOND: I beg to second that, Sir.

The question was put and resolved in the affirmative without division.

REPORTS OF SELECT COMMITTEES

Hon. Miss M. A. MOTTLEY: Mr. Speaker, Sir, earlier today, the Honourable Member for St. James North laid a document entitled "Report of Committee of Privileges on Newspaper Articles Published in the Nation Newspaper, on Wednesday, October 24, 2001".

I would like to move a motion that the Report and the recommendations contained therein be accepted by this Honourable House.

Hon. R. C. EASTMOND: I beg to second that, Sir.

The question was put and resolved in the affirmative without division.

ORDER NO. 12 – RESOLUTION TO APPROVE THE ACQUISITION OF LAND SITUATED AT ST. PATRICKS IN THE PARISH OF CHRIST CHURCH

Hon. G. A. CLARKE: Mr. Speaker, the Resolution before this Honourable House seeks permission to acquire 205.6 square metres of land at St. Patricks, Christ Church, for the purpose of road improvement.

Mr. Speaker, since 1997, the Ministry of Public Works and Transport embarked on a project to rehabilitate the road between Searles, Christ Church and Six Roads, St. Philip. Originally, it was supposed to be ten old properties that were to be acquired. However, a year ago the Ministry advised that some of the properties that were supposed to be acquired had to be abandoned. Of the old properties that were supposed to be acquired, only a small portion of land was

then needed. Some houses were set back from the road and some persons were relocated to Lead Vale to provide the opportunity to widen the road in St. Patricks.

Mr. Speaker, motorists travelling in the St. Patricks area experienced poor visibility and inadequate space to turn at the junction between St. Patricks and Lead Vale. It was felt that the Ministry should take the opportunity at the time, to acquire two properties to provide a roundabout at that junction. The Government took the opportunity to acquire these two parcels of land. One parcel of land was owned by a Mr. Carson Brewster, which comprised 871.5 square metres of land, and that acquisition was done by private treaty. The other parcel of land owned by a Mr. Pearson Harris which comprised 205.6 square metres of land, the owner, apparently, does not have proper title for the land. Therefore, it is necessary for us to provide the opportunity to acquire this property by public acquisition.

Notice was published under Cap. 22 (a) and section 4 authorising the Chief Surveyor to enter the property was also executed. Parliamentary approval is now being sought for the compulsory acquisition of this parcel of land at St. Patrick's. The relevant surveyor plans are here for Honourable Members to inspect. The Honourable Attorney General has certified that this Resolution is in order.

I want to say that since the Section 3 and Section 4 Notices were published, that the houses at St. Patricks have been removed and the roundabout is almost completed.

With those remarks, Mr. Speaker, I beg that this Resolution do now pass.

Mr. D. St. E. KELLMAN: Mr. Speaker, I heard what has been said in this Honourable House. I have asked the Honourable Minister of Housing to give this House a commitment that instead of paying people for their land, that this Honourable House adopts a policy where the owner of the land can have a choice between accepting money or choosing another piece of land.

I want to make it known to this Honourable House again, that land is becoming a scarce resource as it relates to the masses in Barbados. It is not fair for this Parliament to continue to take land from poor people and pay them for it. This Parliament continues to give people money for their land without consulting with them whether they would prefer to take money for their land or choose pieces of land somewhere else.

I am calling on Parliament again to change the Land Acquisition Act so that it would allow an option to be given to persons whose lands are being acquired. I would like to find out from the Honourable Minister of Housing if this is the same land that the concrete roundabout at St. Patricks

was built on, and the measurement of the concrete at the roundabout was supposed to be 18 inches thick? I would like the Honourable Minister of Housing to answer this question, because we need to know if we are going to have concrete roads 18 inches thick or 6 inches thick.

I thank you very much, Sir.
6.20 p.m.

Hon. G. A. CLARKE: I want to thank the Honourable Member for his comments and to say that I am not sure if it is the thickness of the roundabout he is speaking of, nor if it is the intention of the Ministry of Public Works and Transport to build roundabouts 18 inches thick. This might only be a peculiar situation because of the condition of the roundabout at that time, but I would just want to say that we will continue to acquire lands if we have to, but that it is not always possible to exchange land for land. Under the Land Acquisition Act, we are bound to provide full compensation to owners of properties. There are many cases where we use that Act, or sometimes we look at the fair market value.

With those remarks, Mr. Speaker, I beg that this Bill be now passed.

The question was put and resolved in the affirmative without division and Mr. SPEAKER reported accordingly.

ADJOURNMENT

Mr. SPEAKER: The Honourable Attorney General.

Hon. Miss M. A. MOTTLEY: Mr. Speaker, this brings us to the end of Government's Business for today and in the circumstances, I beg to move that the House do adjourn until Tuesday, 13th November, 2001, at 11.00 a.m.

Hon. Miss B. A. MILLER: I beg to second that.

The question was put and resolved in the affirmative without division and Mr. SPEAKER adjourned the House accordingly.
6.23 p.m.

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